THE CHARTER OF THE TOWN OF CARY

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ARTICLE I. INCORPORATION AND GENERAL POWERS

Section 1.1. Incorporation and general powers.

The Town of Cary shall continue to be a body politic and corporate under the name and style of the "Town of Cary," and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold, or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.
(N.C.S.L. Ch. 2005-117, § 1(1.1))

State law reference(s)—General corporate powers, G.S. 160A-11.

Section 1.2. Enumerated powers not exclusive.

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Cary shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.
(N.C.S.L. Ch. 2005-117, § 1(1.2))

Section 1.3. Exercise of powers.

All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or if this Charter makes no provision, as provided by ordinance or resolution of the Town Council and as provided by general law pertaining to municipal corporations.
(N.C.S.L. Ch. 2005-117, § 1(1.3))

Section 1.4. Form of government.

The form of government of the Town of Cary shall be known as the "Council-Manager Form of Government", as set forth in Part 2 of Article 7 of Chapter 160A of the General Statutes (G.S. 160A-147 et seq.) subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Cary from being changed as by law provided.
(N.C.S.L. Ch. 2005-117, § 1(1.4))

ARTICLE II. CORPORATE BOUNDARIES

Section 2.1. Existing corporate boundaries.

The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated "Map of the Town of Cary Corporate Limits" showing the corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated "Description of Cary Corporate Limits". Said map and description shall be retained

permanently in the Office of the Town Clerk as the official map and a description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.
(N.C.S.L. Ch. 2005-117, § 1(2.1))

State law reference(s)—Corporate limits generally, G.S. 160-22.

Section 2.2. Extension of corporate boundaries.

All extensions of the corporate boundaries shall be governed by general law.
(N.C.S.L. Ch. 2005-117, § 1(2.2))

State law reference(s)—Annexation, G.S. 160A-29 *et seq.*

ARTICLE III. MAYOR, TOWN COUNCIL AND APPOINTEES

Section 3.1. Form of government.

The government of the Town and the general management and control of all its affairs shall be vested in a Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.
(N.C.S.L. Ch. 2005-117, § 1(3.1))

Section 3.2. Number and qualification of Council members and Mayor generally.

(a) The Town Council shall consist of six members, two of whom shall be elected at large by all the qualified voters of the Town, and four of whom shall be elected by the qualified voters of each of four single-member electoral districts, respectively, as established by the Town Council pursuant to the law. Terms of Council members shall be overlapping four-year terms. In the 2001 election and quadrennially thereafter, there shall be elected, for four-year terms, one Council member from Electoral District A, one Council member from Electoral District C, and one Council member from the Town at large. In the 2003 election and quadrennially thereafter, there shall be elected, for four-year terms, one Council member from Electoral District B, one Council member from Electoral District D, and one Council member from the Town at large.

(b) The Mayor shall be elected by all the qualified voters of the Town, for a term of four years, in the 2003 election and quadrennially thereafter. The Mayor shall have the right to vote on all matters before the Town Council.

(c) The method of election of the Mayor and Town Council shall be the nonpartisan election and runoff method to be conducted as provided in G.S. 163-293.
(N.C.S.L. Ch. 2005-117, § 1(3.2))

Section 3.3. Legislative powers.

All the legislative powers of the Town shall be vested in the Mayor and Town Council. The Mayor and Town Council shall meet at the time prescribed by law following each election, and those elected shall take the oath of office as prescribed by law to perform faithfully the duties of their respective offices. The Mayor shall have all rights, duties, and responsibilities of a Council member. A Mayor Pro Tempore shall be elected by the Town Council from among its own members and shall hold office as Mayor Pro Tempore during the pleasure of the Council. The organization of the Council shall take

place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefore, may make oath at any time thereafter.
(N.C.S.L. Ch. 2005-117, § 1(3.3))

Section 3.4. Reserved.

Editor's note: This section was omitted in S.L. 2005-117.

Section 3.5. General procedure.

A majority of the members of the Town Council shall constitute a quorum. Its meetings shall be public, and the Mayor, who shall be the official head of the Town, shall, if present, preside and shall have the same power as the other members of the Council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the Mayor, the Mayor Pro Tempore of the Council shall preside, and in the absence of both, a Chair Pro Tempore shall be chosen. The Town Clerk shall be ex officio Clerk of the Town Council, and shall keep records of its proceedings; but in case of the Clerk's temporary absence, or in case of a vacancy in the office, the Town Council may elect by ballot a temporary Clerk, who shall be sworn to the faithful discharge of his duties and may act as Clerk of the Town Council until a Town Clerk is chosen and qualified. On request of one member, the vote shall be yeas, and nays, and shall be entered upon the records.
(N.C.S.L. Ch. 2005-117, § 1(3.5))

Section 3.6. Vacancies.

Vacancies in the Town Council shall be filled by the Council for the remainder of the unexpired terms. In case of a vacancy in the office of Mayor, the remaining members of the Council shall choose from their own number his successor for the unexpired term.
(N.C.S.L. Ch. 2005-117, § 1(3.6))

Section 3.7. Compensation and reimbursement for expenses of elected officers.

The Council may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officers may be made effective at such time as the Council may direct, but the salary of elected officers shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other Town officers and employees.
(N.C.S.L. Ch. 2005-117, § 1(3.7))

Section 3.8. Appointment of officers and assistants.

The Town Council shall appoint a Town Manager, a Town Attorney, a Town Clerk, and a Town Treasurer, and may authorize the appointment of such associates or assistants to such officers as the Council may deem necessary, all who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.
(N.C.S.L. Ch. 2005-117, § 1(3.8))

Section 3.9. Town Manager.

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government, and shall be responsible for the administration of all departments. The manager shall be appointed with regard to executive and administrative abilities only and need not

be a resident of the Town when appointed. The manager shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(b) The Town Manager shall:

(1) Be the administrative head of the Town government;

(2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed;

(3) Attend all meetings of the Council, and recommend for adoption such measures as he shall deem expedient;

(4) Make reports to the Council from time to time upon the affairs of the Town and keep the Council fully advised of the Town's financial condition and its future financial needs.

(5) Appoint and remove all heads of departments, except those employees enumerated in Section 3.8 of this Charter, who shall be appointed by and serve at the pleasure of the Town Council.

(N.C.S.L. Ch. 2005-117, § 1(3.9))

State law reference(s)—Town manager, G.S. 160A-146 et seq.

Section 3.10. Town Attorney.

The Town Attorney shall be the legal advisor to the Town and perform such duties as may be specified by the Council or specified by law. The attorney shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The attorney shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(N.C.S.L. Ch. 2005-117, § 1(3.10))

State law reference(s)—Municipal attorney, G.S. 160A-173.

Section 3.11. Town Clerk.

The Town Clerk shall be the Clerk to the Town Council, keep all records concerning Council actions and shall exercise those powers and duties conferred by the law and shall perform such duties as may be specified by the Council. The Clerk shall be appointed with regard to merit only, and need not be a resident of the Town when appointed. The Clerk shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(N.C.S.L. Ch. 2005-117, § 1(3.11))

State law reference(s)—Municipal clerk, G.S. 160A-171.

Section 3.12. Town Treasurer.

(a) The Town Treasurer shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The Treasurer shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance. The Town Treasurer shall be custodian of all funds of the Town.

(b) The Treasurer shall execute a bond payable to the Town, and at its expense, in such sum and with such sureties as shall be prescribed and approved by the Council conditioned upon the faithful performance of the duties of the office and proper accounting of all funds that may come into this person's possession by virtue of the office. Duties of the Treasurer include:

(1) Manage the cash flows of the Town.

(2) Be responsible for the investment of excess cash under the direction of the Finance Director.

(3) Keep appropriate records for cash flow and investments.

(4) Make reports as requested by the Town Manager, the Finance Director, and the Council.
(N.C.S.L. Ch. 2005-117, § 1(3.12))

Section 3.13. Reserved.
Editor's note: This section was omitted in S.L. 2005-117.

Section 3.14. Reserved.
Editor's note: This section was omitted in S.L. 2005-117.

Section 3.15. Combination of offices of Town Treasurer and Town Clerk.

The Town Council may combine the office of Town Treasurer with the office of Town Clerk in its sole discretion.
(N.C.S.L. Ch. 2005-117, § 1(3.15))

Section 3.16. Terms of commissions, committees, and boards.

The Town Council may:

(1) Fix the terms of members of all commissions, committees, and boards of the Town regardless of the terms established by law for particular commissions, committees or boards;

(2) Appoint the chair or other presiding officer of each commission, committee, or board of the Town, regardless of the provisions of any law; and

(3) Limit the number of terms which any person may serve on any commission, committee, or board of the Town.
(N.C.S.L. Ch. 2005-117, § 1(3.16))

ARTICLE IV. [RESERVED]

Editor's note: This article was omitted in S.L. 2005-117.

ARTICLE V. [RESERVED]

Editor's note: This article was omitted in S.L. 2005-117.

ARTICLE VI. STREET AND SIDEWALK IMPROVEMENTS*

Section 6.1. Street improvements; assessment of cost.

In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this article.
(N.C.S.L. Ch. 2005-117, § 1(6.1))

***State law reference(s)—**Special assessments, G.S. 160A-216 et seq.; construction of sidewalks, G.S. 136-66.1.

Section 6.2. When petition unnecessary.

The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

(1) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or

(2) That it is in the public interest to connect two streets, or portions of a street already improved, or

(3) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portions of street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this article.

(N.C.S.L. Ch. 2005-117, § 1(6.2))

Section 6.3. Street improvement defined.

For the purpose of this article the term "street improvement" shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities.

(N.C.S.L. Ch. 2005-117, § 1(6.3))

Section 6.4. Sidewalks; assessment of cost.

(a) In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council may order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners.

(b) If a sidewalk is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists a sidewalk, on the other side of the street, the total cost of which has been assessed against the abutting property.

(N.C.S.L. Ch. 2005-117, § 1(6.4))

Section 6.5. Assessment procedure.

In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

(N.C.S.L. Ch. 2005-117, § 1(6.5))

Section 6.6. Effect of assessment.

The effect of the act of levying assessments under the authority of this article shall for all purposes be the same as if assessed where levied under authority of general law.

(N.C.S.L. Ch. 2005-117, § 1(6.6))

ARTICLE VII. FINANCE AND TAXATION*

Section 7.1. Custody of Town money.

All monies received by the Town for and in connection with the business of the Town government shall be paid promptly into the Town depository or depositories. Such institution shall be designated by the Town Council in accordance with such regulations and subject to such requirements as to surety for deposits and interest thereon as shall be established by general law. All interest on monies belonging to the Town shall accrue to the benefit of the Town. All monies belonging to the Town shall be disbursed only in accordance with the provisions of the Local Government Budget and Fiscal Control Act (G.S. 159-7 *et seq.*).
(N.C.S.L. Ch. 2005-117, § 1(7.1))

State law reference(s)—Depositories, G.S. 159-31.

Section 7.2. Independent audit.

As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered pursuant to general law, who shall have no personal interest directly or indirectly in the affairs of the Town or any of its officers. The Town Council shall select the public accountant and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Town Council.
(N.C.S.L. Ch. 2005-117, § 1(7.2))

Section 7.3. Reserved.

Editor's note: This section was omitted in S.L. 2005-117.

Section 7.4. Road project regulatory or development fee.

(a) The Town of Cary shall have the right, power, and authority to impose and collect a regulatory or development fee defined as a road project fee on all new construction within the Town limits and extraterritorial jurisdiction.

(b) It is the purpose and intent of this section to provide the Town with the legal mechanism granting it the right, power, and authority to impose and collect fees to finance additional improvements within the Town limits and extraterritorial jurisdiction. These additional road improvements being caused by rapid and continued growth within the Cary area. This section provides approval to the Town to actually develop and implement such a fee system, but does not in any way, describe or detail the actual fee structure and rate classification. An extensive study will subsequently be performed to establish the basis and framework for the fee system should the system be deemed necessary in order to maintain the high level of service delivery presently available to Cary residents.
(N.C.S.L. Ch. 2005-117, § 1(7.4))

ARTICLE VIII. WATER AND SEWER IMPROVEMENTS

Section 8.1. Laterals included in cost.

In ordering water or sewer line extensions, or both, the assessment of the cost thereof under the authority given by the General Statutes, the Town Council may include in such extensions water and

*State law reference(s) Local government finance, G.S. 159-1 et seq.; municipal taxation, G.S. 160A-206 et seq.

sewer line laterals, and include the cost of such laterals in the total cost to be assessed upon abutting properties.
(N.C.S.L. Ch. 2005-117, § 1(8.1))

Section 8.2. Classification and exemption.

Where water or sewer lines are constructed across or through lots or tracts of land or when water or sewer lines, or both, are installed along both sides of corner lots and were or are financed in whole or in part by assessment, the Council may by uniform rule classify such lines for assessment as in its judgment will represent the benefits derived. The schedules of exemptions may be classified as to land uses (residential, business, commercial, industrial, office and institutional, agricultural, or other classifications) and shall be uniform for each such classification used; provided, however, that no schedule of exemptions may provide for exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.
(N.C.S.L. Ch. 2005-117, § 1(8.2))

Section 8.3. Alternative method of assessing.

(a) In addition to, and as alternatives to, the method provided in the General Statutes for assessing the cost of water and sewer lines and laterals, the Town Council, if in its opinion it would be more equitable to do so, may in its discretion levy any such assessments according to either of the following methods:

(1) Equally against each of the lots capable of being served by such line or lines; or

(2) On the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

(b) In lieu of assessing the total cost of a particular project as herein provided, the Town Council may annually, between the first days of January and July of each year, determine the average cost of installing water and sewer mains or lines, and on the basis of such determination may make assessments on such average cost during the following fiscal year beginning July 1. The average cost of such installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and materials cost based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such lines shall not be made until after the particular assessment project has been completed. The purposes of this section are to distribute more equitably the cost of the installation of water and sewer lines throughout the Town and to permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his property will be; and to permit the most expeditious assessment of cost against the property after completion of installation of such lines. The actual cost of acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation cost at the time of the completion of the project, such costs may be assessed separately when they are determined.
(N.C.S.L. Ch. 2005-117, § 1(8.3))

Section 8.4. Payment of assessments.

Any special assessment of the Town for any purpose amounting to less than one hundred dollars ($100.00) shall be paid in cash not later than the next due date of Town taxes rather than in annual installments and shall bear interest as taxes.
(N.C.S.L. Ch. 2005-117, § 1(8.4))

Section 8.5. Water and sewer development fees. [*Editor's note: Please see G.S. Ch. 162A, Article 8*]

In addition to water and sewer service charges and connection charges, the Town Council may establish and collect water and sewer development fees for the privilege of connecting to the Town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water and sewer mains and laterals and sewer outfalls and the replacement or enlargement of existing mains, laterals, and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, however, that the Council may establish higher water and sewer development fees for property developed or to be developed for business, commercial, industrial, or office and institutional uses than those established for residential and other uses and may base water and sewer development fees for residential property upon the number of dwelling units per acre of land.
(N.C.S.L. Ch. 2005-117, § 1(8.5))

ARTICLE IX. REGULATORY POWERS

Section 9.1. Subdivision and zoning regulations.

(a) Any subdivision control ordinance enacted by the Town Council pursuant to general law may also provide for the orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing, and guttering; and street and storm drainage facilities in accordance with Town standards and specifications, and to assure compliance with such requirements, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

(b) (1) In addition to the authority conferred upon it by general or local law, the Town of Cary may create, through the legislative process, general use zoning districts, in which a variety of uses are permitted; conditional use zoning districts, in which limited uses are permitted only upon approval by the Town; overlay zoning districts, which are applied coincidental with the general or conditional use district; and transitional zoning regulations.

(2) The overlay zoning districts may impose additional regulations on some property within the underlying general or conditional use district and not on all properties within those districts.

(3) A person petitioning for rezoning of a tract of land where conditional use districts or overlay districts are authorized by ordinance, may elect to request a general use district, a conditional use district, or an overlay district for the tract. If the petitioner elects to petition for the general use or overlay district zoning, and if the petition is approved, the rezoned property may be used for any of the uses permitted in the applicable general use or overlay district. If the petitioner elects to petition for conditional use district zoning, the petition must specify the actual use or uses, and all other development regulations authorized by State law, which are intended for the property specified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district. If the petition is for conditional use district zoning, the Town Council is to approve or disapprove the petition on the basis of the specific use or uses and development regulations requested. If the petition is approved, the Town Council shall issue a conditional use permit authorizing the requested use with such reasonable conditions as the Town Council determines to be desirable in promoting public health, safety, and general welfare.

(4) The conditions contained in a conditional use permit issued by the Town Council may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of

development; and such other matters as the Town Council may find appropriate or the petitioner may propose, including architectural review or controls.

(5) It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and ensure that substantial justice be done.

(N.C.S.L. Ch. 2005-117, § 1(9.1))

State law reference(s)—Planning and development, G.S. 160A-206.

Section 9.2. Regulatory codes.

The Town Council may make effective and enforce within the territory under its extraterritorial zoning jurisdiction and lying outside the corporate limits and within one mile thereof, all ordinances and codes of the Town regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to the General Statutes, and ordinances relating to unsafe buildings adopted pursuant to the provisions of the General Statutes. In addition, the Town Council may enforce in such area the North Carolina State Building Codes, including Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy, Existing Buildings, and Residential, all as published by the North Carolina Building Code Council. Such enforcement power shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate permit or permits be obtained from the Town; provided, the Town Council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

(N.C.S.L. Ch. 2005-117, § 1(9.2))

Section 9.3. Underground utilities.

In addition to the powers now or hereafter granted to municipalities by law, the Town Council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the Town be installed underground, whether or not the same are installed in public rights-of-way.

(N.C.S.L. Ch. 2005-117, § 1(9.3))

Section 9.4. Repealed.

(N.C.S.L. Ch. 2005-117, § 1(9.4); N.C.S.L. Ch. 2009-459)

ARTICLE X. CLAIMS AGAINST THE TOWN

Section 10.1. Settlement of claims by Town Manager.

The Town Manager may, without the approval of the Town Council, settle claims against the Town for personal injuries or damages to property when the amount involved does not exceed the sum of two thousand five hundred dollars ($2,500.00) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident or occasion complained of.

(N.C.S.L. Ch. 2005-117, § 1(10.1))

ARTICLE XI. SALE, LEASE, AND DISPOSITION OF PROPERTY

Section 11.1. Disposition of certain property by Town Manager.

(a) The Town Council may authorize the City Manager or Deputy City Manager to dispose of all the following property interests without obtaining Town Council approval for each disposition:

(1) Water or sewer easements, or similar interests in real property, as part of an exchange for other water and sewer easements or similar interests in property.

(2) Water or sewer easements, or similar interests in real property, when the easement or similar interest in real property is no longer needed by the Town.

(b) The provisions of Article 12 of Chapter 160A of the General Statutes shall not apply to the disposition of property under this section.
(N.C.S.L. 2015-84)

Section 11.2. Granting of utility easements and agreements.

The Town Council may authorize the Town Manager or Deputy Town Manager to grant utility easements and agreements, or similar interests, in real property over Town-owned property without obtaining Town Council approval.
(N.C.S.L. 2016-68, 7-1-2016)

Section 11.3. Conveyance of real property with restrictions.

When the Town Council determines that a sale or disposition of real property is in the public interest, the Town may, in addition to other authorized means, sell, exchange, or transfer the fee or any lesser interest in real property, either by public sale or by negotiated private sale. The Town may attach to the transfer and to the interest conveyed any covenants, conditions, or restrictions, or a combination of them, the Town deems necessary to further the public interest. The consideration received by the Town, if any, for the conveyance may reflect the restricted use of the property resulting from the covenants, conditions, or restrictions. The Town may invite bids or written proposals, including detailed development plans and site plans, for the purchase of any such property or property interest, whether by sale, exchange, or other transfer, pursuant to the specifications as may be approved by the Town. A sale, exchange, or other transfer of real property, or interest therein, pursuant to this section may be made contingent upon any necessary rezoning of the property. Any conveyance under this section may be made only pursuant to a resolution of the Town Council authorizing the conveyance. Notice of the proposed transaction shall be given at least 10 days prior to adoption of the resolution by publication, and the notice shall generally describe (i) the property involved, (ii) the nature of the interest to be conveyed, and (iii) all of the material terms of the proposed transaction, including any covenants, conditions, or restrictions which may be applicable. The notice shall give the time and place of the Town Council meeting where the proposed transaction will be considered and shall announce the Council's intention to authorize the proposed transaction. The authority contained in this section is in addition to, and not in limitation of, any other authority granted by this Charter or any other general or local law.
(N.C.S.L. 2016-68, 7-1-2016)

APPENDIX 1: LOCAL ACT ADOPTING CHARTER

App. 1.1. An Act to Update the Charter of the Town of Cary.

(a) The purpose of this act is to revise the Charter of the Town of Cary and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

(b) The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 868 of the 1971 Session Laws
Chapter 173 of the 1973 Session Laws
Chapter 357 of the 1973 Session Laws
Chapter 816 of the 1977 Session Laws
Chapter 51 of the 1985 Session Laws
Chapter 801 of the 1987 Session Laws
Chapter 511 of the 1989 Session Laws
Chapter 874 of the 1989 Session Laws
Section 3 of S.L. 2001-485.

(c) The following acts are not affected by this act:

Chapter 1275, Session Laws of 1979 (removal of areas from the corporate limits)
Chapter 279, Session Laws of 1989 (closing streets in ETJ)
Chapter 27, Session Laws of 1993 (removal of areas from the corporate limits and addition of areas to the corporate limits)
Chapter 137, Session Laws of 1993 (acquisition of street right-of-way outside the corporate limits)
Chapter 325, Session Laws of 1993 (motor vehicle tax)
S.L. 1998-192 (Swift Creek Management Plan)
S.L. 2000-108 (removal, replacement, and preservation of trees and shrubs)
S.L. 2001-191 (clear-cutting of trees in buffer zones, protection of specimen trees)
S.L. 2001-245 (expending funds on roads outside the corporate limits)
S.L. 2003-74 (acquisition of property for utilities)
S.L. 2001-286 (red-light cameras)
S.L. 2005-41 (reimbursement agreements).

(d) No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

(e) No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

(f) All existing ordinances and resolutions of the Town of Cary and all existing rules or regulations of departments or agencies of the Town of Cary not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

(g) No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Cary or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

(h) If any part of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(i) Whenever a reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

(j) This act is effective when it becomes law.
(N.C.S.L. Ch. 2005-117, §§ 2 – 11)

APPENDIX 2: INCORPORATION OF LOCAL ACTS INTO CHARTER

App. 2.1. Procedure for permanently closing streets and alleys.

(a) When the Town of Cary proposes to permanently close any street or public alley, the Council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the Council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the Council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the Council's order to the General Court of Justice within 30 days after its adoption. The court shall hear the matter de novo, and shall have full jurisdiction to try the issues arising and to order the street or alley closed upon proper findings of fact by the jury. No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

(d) This section shall apply to any street or public alley within the Town of Cary that has been irrevocably dedicated to the public, without regard to whether it has actually been opened.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) The Town of Cary may reserve its right, title, and interest in any utility improvement or easement within a street closed pursuant to this section. Such reservation shall be stated in the order of closing.
(N.C.S.L. Ch. 1989-279)

App. 2.2. Acquisition of property outside corporate limits.

(a) The Town of Cary may acquire by purchase or eminent domain the fee or any lesser interest in real property, which is located outside the corporate limits of the Town of Cary, for use under G.S. 160A-296(a)(3) only if the street for which right-of-way is to be acquired is in a comprehensive plan adopted under G.S. 136-66.2, and for which an agreement for right-of-way acquisition has been reached under G.S. 136-66.3.

(b) Acquisition of property outside the corporate limits by purchase or condemnation under subsection (a) of this section may be exercised only as provided by G.S. 160A-240.1(b).

(c) The Town of Cary may acquire property outside its corporate limits by purchase or eminent domain under G.S. 160A-296(a)(3) only as provided by G.S. 160A-240.1(b).
(N.C.S.L. Ch. 1993-137; Ord. No. 06-001, § 5, 2-9-2006)

App. 2.3. Motor vehicle taxes. [*Editor's note: Please see G.S. 20-97 (revised) and 160A-3*]

All taxes levied under the provisions of Article 3, Chapter 20 of the North Carolina General Statutes (G.S. 20-39 *et seq.*) are intended as compensatory taxes for the use and privileges of the public highways of the State of North Carolina, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and the Town of Cary shall not levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that the Town of Cary may levy not more than ten dollars ($10.00) per year upon any vehicle resident therein. Provided, further, that the Town of Cary may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in the Town of Cary as a taxicab.
(N.C.S.L. Ch. 1993-325; Ord. No. 06-001, § 6, 2-9-2006)

App. 2.4. Compliance with Swift Creek Management Plan.

(a) The Town of Cary shall not adopt any ordinance authorized by Article 18 of Chapter 153A of the General Statutes (G.S. 153A-320 *et seq.*), Article 19 of Chapter 160A of the General Statutes (G.S. 160A-360 *et seq.*), or under any local Act or Charter provision relating to the subject of those Articles, nor grant any permit or approval pursuant to those ordinances, that would be inconsistent with the standards and provisions of the Swift Creek Management Plan.

(b) This section applies to any zoning map amendment and to any other zoning amendment, modification, repeal, or changes in zoning regulations and restrictions or zone boundaries relating to the area set forth in the Swift Creek Management Plan, but shall not be construed to prevent the Town of Cary from adopting zoning ordinance text changes.

(c) This section shall not affect any valid and unexpired vested right of any landowner arising by law pursuant to G.S. 153A-344.1 or G.S. 160A-385.1, nor shall this section affect the right of any person to protest zoning changes or otherwise appeal planning, subdivision, or zoning actions as provided by Article 18 of Chapter 153A of the General Statutes (G.S. 153A-320 *et seq.*), or Article 19 of Chapter 160A of the General Statutes (G.S. 160A-360 *et seq.*), or by local ordinance.

(d) If the Town of Cary has an ordinance to effectuate the recommended minimum performance standards for the Swift Creek Watershed and the other specific features set forth in the Swift Creek Management Plan, then the Town of Cary may modify its zoning ordinance to further meet or exceed the requirements of the Swift Creek Management Plan. The Swift Creek Management Plan may be modified by interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes entered into by all of the affected jurisdictions.

(e) The Town of Cary may extend utilities unilaterally to any portion of its jurisdiction subject to the Swift Creek Management Plan provided that, prior to October 22, 1998, the Town of Cary zoned or rezoned the subject area in anticipation of providing utilities to the area.
(N.C.S.L. Ch. 1998-192; Ord. No. 06-001, § 7, 2-9-2006)

App. 2.5. Ordinances regulating trees and shrubs generally.

(a) In order to preserve and enhance one of the most valuable natural resources of the community and to protect the safety and welfare of its citizens, the Town of Cary may adopt ordinances to regulate the planting, removal, and preservation of trees and shrubs on public and private property within the Town. Any ordinance adopted pursuant to this section shall exclude property to be developed for single-family or duplex residential uses and shall exclude normal forestry activities conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes.

(b) Prior to adopting an ordinance authorized by subsection (a) of this section, a public hearing shall be held before the Town Council for the Town of Cary. Notice of the hearing shall be given in accordance with G.S. 160A-364.
(N.C.S.L. Ch. 2000-108; Ord. No. 06-001, § 8, 2-9-2006)

App. 2.6. Ordinances regulating clear-cutting of trees in buffer zones and protection of specimen tree.

(a) The Town of Cary may adopt ordinances to regulate the removal and preservation of existing trees and shrubs prior to development within a perimeter buffer zone of up to sixty-five (65) feet along roadways and property boundaries adjacent to developed properties and up to thirty-two (32) feet along property boundaries adjacent to undeveloped properties. All such buffer zones shall be measured from the outside boundary of any property, including property zoned for residential and nonresidential use. The purpose of such ordinances shall be to protect existing trees and shrubs for use as future buffers.

(b) Ordinances adopted pursuant to this section shall be limited to situations where undeveloped property is planned or zoned for residential or nonresidential use in accordance with adopted Town plans and zoning regulations. Such ordinances shall include reasonable provisions for access onto and within the subject property.

(c) Notwithstanding any limitations contained in subsection (a) of this section, the Town may adopt ordinances to regulate the preservation and removal of significant specimen or "champion" trees on sites being planned for new development. Specific standards for identifying and designating such trees, including species and size, shall be incorporated as part of any such ordinance.

(d) Any ordinance adopted pursuant to this section shall exclude normal forestry activities on property taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes. However, for such properties, a municipality may deny a building permit or refuse to approve a site or subdivision plan for a period of five years following harvest if all or substantially all of the perimeter buffer trees which should have been protected were removed from the tract of land for which the permit or plan approval is sought.

(e) Before adopting an ordinance authorized by this section, the Council shall hold a public hearing on the proposed ordinance. Notice of the public hearing shall be given in accordance with G.S. 160A-364.

(f) Nothing in this section shall be construed to limit or be limited by any provisions of App. 2.12. or any other existing laws or ordinances.
(N.C.S.L. Ch. 2001-191; Ord. No. 06-001, § 9, 2-9-2006)

App. 2.7. Construction of roadways outside corporate limits.

(a) The Town of Cary may appropriate funds not otherwise limited as to use by law to construct roadways in areas outside its corporate boundaries and outside its extraterritorial planning and zoning jurisdiction only if those roadways are owned by the State of North Carolina and maintained by the Department of Transportation.

(b) The Town of Cary may, but is not required to, participate in the right-of-way and construction cost of a State highway improvement approved by the Board of Transportation under G.S. 143B-350(f)(4).
(N.C.S.L. Ch. 2001-245)

App. 2.8. Traffic control photographic system (red light cameras).

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subsection (a) of this section, installed on a street or highway which is a part of the state highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a street within the Town of Cary shall meet standards established by the Town of Cary and shall be consistent with any standards set by the Department of Transportation.

(c) Any traffic control photographic system installed on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than three hundred (300) feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with the Town of Cary.

(d) The Town of Cary may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. If the Town of Cary adopts an ordinance pursuant to this section then, notwithstanding G.S. 20-176, a violation of G.S. 20-158 detected only by a traffic control photographic system shall not be an infraction. If a violation of G.S. 20-158 is detected by both a law enforcement officer and a traffic control photographic system, the officer may charge the offender with an infraction. If the officer charges the offender with an infraction, a civil penalty issued by the Town of Cary for the same offense is void and unenforceable. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within thirty (30) days after receiving notification of the violation, furnishes the office of the Mayor any of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

c. An affidavit stating that the person who received the citation is not the owner or driver of the vehicle, or that the person who received the citation was not driving a vehicle at the time and location designated in the citation.

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(3) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(4) The owner of the vehicle shall be issued a citation that shall be attached to photographic evidence of the violation that identifies the vehicle involved. The citation shall clearly state the manner in which the violation may be challenged. The owner of the vehicle shall comply with the directions on the citation. The citation shall be processed by officials or agents of the Town of Cary and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The Town of Cary may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(5) The Town of Cary shall establish a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The Town of Cary may establish an appeals panel composed of Town employees to review objections. If the Town of Cary does not establish an appeals panel composed of Town employees, the Mayor shall review and make a final decision on all objections.

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices.

(f) The Town of Cary upon enacting an ordinance implementing a traffic control photographic system may enter into a contract with a contractor for the lease, lease-purchase, or purchase of the system. The Town of Cary may enter into only one contract for the lease, lease-purchase, or purchase of the system and the duration of the contract may be for no more than sixty (60) months. After the period specified in the contract has expired, the system shall either be the property of the Town of Cary or the system shall be removed and returned to the contractor.

(g) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the Wake County school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the traffic control photographic system; paying a contractor for operating the system; and paying any administrative costs incurred by the Town of Cary related to the use of the system.
(N.C.S.L. Ch. 2001-286; N.C.S.L. Ch. 2003-380; N.C.S.L. Ch. 2004-141; Ord. No. 06-001, § 11, 2-9-2006; N.C.S.L. Ch. 2010-132)

App. 2.9. Issuing licenses for closing-out sales in accordance with N.C. General Statutes Article 17, Chapter 66.

The Town Council is authorized to designate an officer other than the Town Clerk to issue closing-out sale licenses.
(N.C.S.L. 2002-33; N.C.S.L. 2007-22; Ord. No. 2007-17, § 1, 10-11-07)

App. 2.10. Acquisition of utility rights-of-way when acquiring street rights-of-way.

When acquiring rights-of-way for the construction or improvement of streets, the Town may also locate and acquire such additional rights-of-way as may be necessary for the present or future location or relocation, above or below ground, of telephone, telegraph, electric, and other lines, as well as gas, water, sewerage, oil, and other pipelines to be operated by public utilities defined and regulated under Chapter 62 of the General Statutes. In acquiring real property by eminent domain for these purposes, the Town may use the procedures of either Chapter 40A or Chapter 136 of the General Statutes.
(N.C.S.L. Ch. 2003-74, Ord. No. 06-001, § 12, 2-9-2006)

App. 2.11. Reimbursement of developers for design and construction of public infrastructure.

(a) The Town of Cary may enter into reimbursement agreements with private developers and property owners for the design and construction of public infrastructure that is included on the Town's Capital Improvement Plan and serves the developer or property owner. For the purpose of this section, public infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) The Town of Cary shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) The Town of Cary may provide for such reimbursements to be paid from any lawful source.

(d) No reimbursement pursuant to an agreement authorized by this section shall be deemed to be construction subject to Article 8 of Chapter 143 of the North Carolina General Statutes (G.S. 143-48 et seq.) or to be deemed to be a violation or evasion of any provision of said Article. Notwithstanding the foregoing provisions of this subsection, a construction contract subject to a reimbursement agreement authorized by this section shall not be awarded by a developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the Town of Cary.
(N.C.S.L. Ch. 2005-41; Ord. No. 06-001, § 13, 2-9-2006)

App. 2.12. Standing of Town to enforce Swift Creek Management Plan.

(a) The Town of Cary, as a party to the Swift Creek Management Plan, shall have standing to contest an action of another party to the Swift Creek Management Plan that the Town Council for the Town of Cary believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of App. 2.4.

(b) Any person who resides in the Town of Cary and who also resides in the Swift Creek watershed shall have standing to contest an action of any party to the Swift Creek Management Plan that the person believes is inconsistent with the standards and provisions of the Swift Creek

Management Plan in violation of the provisions of subsections (a) through (c) of App. 2.4., provided that the person has a specific personal or legal interest in the action and is adversely affected thereby.

(c) The Town of Cary or person who has standing under subsection (a) or (b) of this section may file a petition in the superior court of Wake County seeking review of the action of a local government that the Town of Cary or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of App. 2.4. A petition under this section shall be filed no later than sixty (60) days after the adoption, amendment, or repeal of the ordinance, the grant of the permit or approval, an extension of any utility, or other action the local government or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of App. 2.4.

(d) A petition filed under this section shall state with specificity what exceptions are taken to the action of the respondent local government and what relief the petitioner seeks. Within fifteen (15) days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent local government shall transmit to the court a copy of the ordinance, permit, or approval and any other minutes or documents that constitute the record of the challenged action.

(e) The court may hear oral arguments, receive written briefs, and take evidence on the question of whether or not there has been a violation of subsections (a) through (c) of App. 2.4.

(f) If the court determines that there has been a violation of subsections (a) through (c) of App. 2.4., it shall declare the ordinance, permit, approval, or other action void and may order any additional relief that appears appropriate.

(g) This section shall not be construed to preclude a judicial determination, based on common-law principles, statutory provisions, or other law, that standing exists in a particular case for a person to bring an action to challenge an alleged violation of the Swift Creek Management Plan and the provisions of subsections (a) through (c) of App. 2.4.
(N.C.S.L. Ch. 2005-89; Ord. No. 06-001, § 14, 2-9-2006)

App. 2.13. Ordinances regulating demolition of historic structures in its historic districts.

(a) In order to preserve and enhance one of the most valuable and unique natural resources of the community, and to preserve the property values and promote the general welfare of its citizens, a municipality may adopt ordinances to regulate the demolition of historic structures within its municipal corporate limits and extraterritorial jurisdiction. For purposes of this act, the term "historic structures" means:

(1) Any designated local, State, or national landmark; or,

(2) Any structure that is:

a. Individually listed in the National Register of Historic Places;

b. Individually identified as a contributing structure in a historic district listed in the National Register of Historic Places;

c. Certified or preliminarily determined by the Secretary of the Interior as contributing to the significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

d. Individually listed in the State inventory of historic places;

e. Individually listed in the county Register of Historic Places; or,

f. Individually listed in a local inventory of historic places in communities with historic preservation programs that have been certified by an approved State program (including certified local governments) as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

(b) Prior to adopting an ordinance under this act, a public hearing shall be held before the governing board of the municipality. Notice of the hearing shall be given in accordance with G.S. 160A-364. An ordinance adopted under this act may not prohibit the demolition of historic structures except in accordance with the provisions of Part 3C of Article 19 of Chapter 160A of the General Statutes.
(N.C.S.L. 2007-66; Ord. No. 2007-17, § 1, 10-11-2007)

App. 2.14. Authority to require developers of multifamily units to provide funds for recreational land to serve multifamily developments.

The Town may, by ordinance, provide that a developer of multifamily units that are not subject to the subdivision ordinance shall provide funds to the Town whereby the Town may acquire recreational land or areas to serve the multifamily development, including the purchase of land that may be used to serve more than one multifamily development or residential subdivision within the immediate area. All funds received by the Town pursuant to this section may be combined with funds received from residential subdivisions under G.S. 160A-372, and shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this section shall be based on a flat fee per unit. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the Town Council determines that this combination is in the best interests of the citizens of the area to be served.
(N.C.S.L. 2007-321; Ord. No. 2007-17, § 1, 10-11-2007)

App. 2.15. Electronic public notice for certain public hearings.

The governing body of a city or town may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the Town's internet site. Electronic notice may be in lieu of traditional publication methods. Ordinances adopted pursuant to this section shall not supersede any State law that requires notice by mail to certain classes of people or the posting of signs on certain property and shall not alter the publication schedule for any public notice.
(N.C.S.L. 2008-5; Ord. No. 2014-Code-01, 1-9-2014)

App. 2.16 Development incentives in exchange for reductions in energy consumption.

Counties or municipalities may, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder within the county or municipality and its extraterritorial planning jurisdiction if the developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.
(N.C.S.L. 2008-22)

App. 2.17. Town e-mail subscription lists; review and use of.

(a) Notwithstanding Chapter 132 of the General Statutes, when a unit of local government maintains an electronic mail list of individual subscribers, Chapter 132 of the General Statutes does not require that unit of local government to provide a copy of the list. The list shall be available for public inspection in either printed or electronic format or both as the unit of local government elects.

(b) If a unit of local government maintains an electronic mail list of individual subscribers, the unit of local government and its employees and officers may use that list only:

(1) For the purpose for which it was subscribed to;

(2) To notify subscribers of an emergency to the public health or public safety; or

(3) In case of deletion of that list, to notify subscribers of the existence of any similar lists to subscribe to.

(N.C.S.L. 2010-83)

App. 2.18. Exempting bona fide farms from obtaining building permits for accessory buildings in the Extraterritorial Jurisdiction.

A municipality may provide in its zoning ordinance that an accessory building of a 'bona fide farm' as defined by G.S. 153A-340(b) has the same exemption from the building code as it would have under county zoning as provided by Part 3 of Article 18 of Chapter 153A of the General Statutes.
(N.C.S.L. 2011-34; Ord. No. 2011-Code-08, 11-17-2011)

App. 2.19. Exempting Town from competitive bidding requirements for apparatus, supplies, materials, or equipment that will be used as part of certain pilot programs aimed at increasing energy efficiency.

A municipality or county may contract for apparatus, supplies, materials or equipment that will be used as part of any pilot program authorized by its governing board aimed at increasing energy efficiency without being subject to the requirements of G.S. 143-129, 143-131 and 143-132. Notwithstanding any provision of law, a municipality or county may award a contract under this section in its sole discretion.

This Act expires on June 30, 2015.
(N.C.S.L. 2011-150; Ord. No. 2011-Code-08, 11-17-2011)

App. 2.20. Entering into leases for the siting and operation of a renewable energy facility.

G.S. 160A-272, Lease of rental of property, was amended as to the Town to include the following authority:

The council may approve a lease for the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 20 years without treating the lease as a sale of property and without giving notice by publication of the intended lease.
(Ord. No. 2011-Code-08, 11-17-2011)

App. 2.21. Broaden the exception to the public records act for identifying information of minors participating in local government parks and recreation programs to include all local government programs and also to protect email addresses of minors in such programs in the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon, and the City of Raleigh.

(a) G.S. 132-1.12 reads as rewritten:

"§ 132-1.12. Limited access to identifying information of minors participating in local government programs.

(a) A public record, as defined by G.S. 132-1, does not include, as to any minor participating in a program sponsored by a local government or combination of local governments, any of the following information as to that minor participant: (i) name, (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that minor participant's parent or legal guardian, (vii) e-mail address, or (viii) any other identifying information on an application to participate in such program or other records related to that program. Notwithstanding this subsection, the name of a minor who has received a scholarship or other local government-funded award of a financial nature from a local government is a public record.

(b) The county, municipality, and zip code of residence of each participating minor covered by subsection (a) of this section is a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information listed in subsection (a) of this section confidential information."

(b) This section applies to the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon, and the City of Raleigh only. (Ord. No. 2013-Code-02, 6-13-2013)

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2014-Code-01	1-9-2014		App. 2.15

CARY, NORTH CAROLINA

Supp. No. 78 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2020-Code-01, passed April 30, 2020, and Ord. No. 2020-LDO-01, passed May 7, 2020. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 78." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 77 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2019-Code-04, passed October 10, 2019. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 77." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 76 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2019-Code-03, passed September 26, 2019. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 76." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 75 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2019-Code-02, passed September 12, 2019. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 75." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 74 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2019-Code-01, passed March 28, 2019. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 74." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 73 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-Code-05, passed December 13, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 73." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 72 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-Code-04, passed August 23, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 72." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 71 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-Code-03, passed June 28, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 71." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 70 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-Code-01, passed April 5, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 70." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 69 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-Code-04, passed July 27, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 69." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 68 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-Code-03, passed February 23, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 68." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 67 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-Code-02, passed February 23, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 67." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 66 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-Code-01, passed January 5, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 66." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 65 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Session Law 2016-68, passed July 1, 2016, with amendments to the Officials Page. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 65." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 64 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Session Law 2016-68, passed July 1, 2016. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 64." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 63 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2016-Code-01, passed February 25, 2016. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 63." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 62 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-Code-07, passed June 18, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 62." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 61 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-Code-006, passed November 19, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 61." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 60 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-Code-005, passed October 22, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 60." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 59 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-Code-004, passed July 9, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 59." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 58 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-Code-002, passed June 25, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 58." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 57 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-Code-01, passed January 28, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 57." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 56 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-Code-03, passed June 26, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 56." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 55 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-Code-02, passed January 30, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 55." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 54 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-Code-01, passed January 9, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 54." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 53 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-Code-05, passed October 10, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 53." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 52 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-Code-03, passed September 12, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 52." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 51 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-Code-02, passed June 13, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 51." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 50 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-Code-01, passed April 18, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 50." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 49 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-Code-07, passed December 13, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 49." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 48 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-Code-06, passed October 11, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 48." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 47 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-Code-05, passed September 6, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 47." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 46 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-Code-04, passed August 23, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 46." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 45 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-Code-03, passed April 19, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 45." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 44 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-Code-01, passed February 9, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 44." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 43 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-09, passed December 15, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 43." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 42 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-08, passed November 17, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 42." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 41 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-07, passed October 13, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 41." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 40 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-06, passed September 27, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 40." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 39 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-05, passed June 30, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 39." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 38 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-04, passed June 16, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 38." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 37 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-03, passed April 14, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 37." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 36 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-02, passed March 10, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 36." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 35 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-Code-01, passed February 10, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 35." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 34 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-10, passed December 16, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 34." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 33 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-08, passed October 14, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 33." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 32 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-07, passed September 16, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 32." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 31 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-06, passed July 15, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 31." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 30 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-04, passed June 9, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 30." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 29 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-03, passed May 13, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 29." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 28 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-Code-02, passed March 10, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 28." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 27 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-11, passed October 8, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 27." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 26 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-10, passed August 13, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 26." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 25 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-08, passed June 10, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 25." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 24 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-07, passed May 14, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 24." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 23 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-04, passed March 12, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 23." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 22 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-03, passed February 12, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 22." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 21 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-Code-01, passed January 15, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 21." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 20 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2008-Code-09, passed November 20, 2008. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 20." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 19 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2008-Code-06, passed October 30, 2008. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 19." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

Remove from Code.	***Add to Code***
Title Page	Title Page
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xiii, xiv	xiii, xiv
CHECKLIST OF UP-TO-DATE PAGES	
1—5	1—5
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CD6:23, CD6:24	CD6:23, CD6:24
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CARY, NORTH CAROLINA

Supp. No. 18 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2008-Code-03, passed September 11, 2008. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 18." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

Remove from Code. . . . . Add to Code

Title Page. . . . . Title Page

CHECKLIST OF UP-TO-DATE PAGES

3—5. . . . . 3—5

CHAPTER 34: TRAFFIC AND VEHICLES

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CODE COMPARATIVE TABLE

CCT:17, CCT:18. . . . . CCT:17, CCT:18

CARY, NORTH CAROLINA

Supp. No. 17 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2008-Code-02, passed June 12, 2008. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 17." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

Remove from Code. . . . . Add to Code

Title Page. . . . . Title Page

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CARY, NORTH CAROLINA

Supp. No. 16 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2008-06, passed May 8, 2008. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is "Supp. No. 16." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

Remove from Code.	***Add to Code***
Title Page	Title Page
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CHECKLIST OF UP-TO-DATE PAGES	
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CHAPTER 2: ADMINISTRATION	
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SUPPLEMENT NO. 15
February 2008

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 07-20, effective December 13, 2007.

See the Code Comparative Table for further information.

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SUPPLEMENT NO. 14
November 2007

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 07-16, effective October 11, 2007.

See the Code Comparative Table for further information.

Included in the Charter is:

Ordinance No. 07-17, effective October 11, 2007.

See the Charter Comparative Table for further information.

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SUPPLEMENT NO. 13
September 2007

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 07-12, effective September 11, 2007.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
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SUPPLEMENT NO. 12
August 2007

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 07-09, adopted July 26, 2007.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
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SUPPLEMENT NO. 11
June 2007

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 07-05, adopted May 10, 2007.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
xv, xvi	xv, xvi
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SUPPLEMENT NO. 10
June 2007

APPENDIX A

LAND DEVELOPMENT ORDINANCE

City of

CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 2007-04, adopted March 22, 2007.

See the Land Development Ordinance Disposition Table for further information.

Remove old pages	*Insert new pages*
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SUPPLEMENT NO. 9
March 2007

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 07-003, adopted February 22, 2007.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
iii	iii
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SUPPLEMENT NO. 8
December 2006

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 06-021, adopted December 14, 2006.

See the Code Comparative Table for further information.

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SUPPLEMENT NO. 7
November 2006

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 06-018, adopted October 12, 2006.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
xv, xvi	xv, xvi
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
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SUPPLEMENT NO. 6
September 2006

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 06-008, adopted April 27, 2006.

See the Code Comparative Table for further information.

Included in the Charter is:

Ordinance No. 06-007, adopted April 27, 2006.

See the Charter Comparative Table for further information.

Remove old pages	*Insert new pages*
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SUPPLEMENT NO. 5
April 2006

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 06-006, adopted March 23, 2006.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
xv—xvii	xv—xvii
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SUPPLEMENT NO. 4
March 2006

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 06-003, adopted February 9, 2006.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
xv—xvii	xv—xvii
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SUPPLEMENT NO. 3
December 2005

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

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Ordinance No. 05-018, adopted December 15, 2005.

See the Code Comparative Table for further information.

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SUPPLEMENT NO. 2
December 2005

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 05-017, adopted November 10, 2005.

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SUPPLEMENT NO. 1
November 2005

CODE OF ORDINANCES

TOWN OF CARY, NORTH CAROLINA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

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CODE OF ORDINANCES

TOWN OF

CARY, NORTH CAROLINA

Published by Order of the Town Council

Adopted: May 26, 2005
Effective: May 26, 2005

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CURRENT OFFICIALS

of

CARY, NORTH CAROLINA

Harold Weinbrecht, Mayor
Ed Yerha, Mayor Pro Tem, At-Large Council Member
Ken George, District D Council Member
Lori Bush, At-Large Council Member
Jennifer Robinson, District A Council Member
Don Frantz, District B Council Member
Jack Smith, District C Council Member
Town Council

Sean R. Stegall
Town Manager

Christine B. Simpson
Town Attorney

Virginia H. Johnson
Town Clerk

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Cary, North Carolina.

Source materials used in the preparation of the Code were the 1982 Code and ordinances adopted by the Town Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any code section or ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

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Indices

The indices have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indices themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Todd Paul Myers, J.D., Director of Editorial Services, and Pat McAllister, Senior Code Editor, of the American Legal Publishing Corporation, Cincinnati, Ohio. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Christine B. Simpson, Town Attorney, Charles H. Henderson, former Town Attorney (retired) and Sue Rowland, Town Clerk for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code that will make the active law of the Town of Cary readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the Town's affairs.

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ORDINANCE NO. 05-008

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE TOWN OF CARY, NORTH CAROLINA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

Section 1. The Code entitled "Code of Ordinances, Town of Cary, North Carolina," published by Municipal Code Corporation, consisting of chapters 1 through 36, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before March 10, 2005 with the exception of Ordinances 05-001 and 05-002, which will be included in the first supplement to this Code, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Additions or amendments to the Code when passed in such form as to indicate the intention of the Cary Town Council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 5. Ordinances adopted after March 10, 2005 and Ordinances 05-001 and 05-002 (both adopted on January 13, 2005) that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

Section 6. This ordinance shall become effective upon adoption.

Adopted: 5/26/2005

Effective: 5/26/2005

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Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

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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 curbline 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 Utilities or the Director of Transportation and Facilities, as appropriate, with supporting information that justifies the modification.

(1) The Director of Utilities, 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 Utilities 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; Ord. No. 2019-Code-04, 10-10-2019)

Chapter 2

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ARTICLE I. IN GENERAL

Sec. 2-1. Notices; service and proof.

(a) Unless otherwise specifically provided, whenever a notice is required to be given pursuant to any section of this Code such notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his last known business or residence address as the same appears in the public records or other records pertaining to the matter for which such notice is served or by any other method of delivery approved by law. Service by mail shall be deemed to have been completed at the time of deposit in the post office or any United States mailbox.

(b) Proof of giving any notice may be made by the certificate of any officer or employee of this town or by affidavit of any person over the age of 18 years who actually accomplished personal service in conformity with this Code or other provisions of law applicable to the subject matter concerned, or by a return receipt signed by the recipient notified by United States mail.
(Code 1976, § 1-13; Code 1982, § 2-2)

Sec. 2-2. Electronic notice of public hearings.

(a) *Authority:* Session Law 2014-410 authorizes the Town to give notice of public hearings through electronic means, including, but not limited to, the Town's Internet site. This ordinance states the Town's intent to provide legal notice of Town of Cary public hearings electronically by publishing such notice on the Town's website in lieu of publishing such notice in a newspaper.

(b) *Public Hearing Notice:* Notwithstanding anything to the contrary contained in Town Ordinances, all notices of public hearings ('Public Hearing Notice') may be published on the Town's website instead of in a newspaper. Any such website Public Hearing Notice shall state the subject, date, time and location of the public hearing, and such other information as may be required by state law or Town ordinance for the particular public hearing. The Public Hearing Notice shall be posted to the website according to the publication schedule required by state law or Town ordinance. The Public Hearing Notice shall remain posted until the day after the day on which the associated public hearing closes.

A copy of the Public Hearing Notices published on the Town's website shall be maintained according to the Records Retention and Disposition Schedule. This copy shall serve as proof that the Public Hearing Notice was published by posting to the Town's website, and shall show the date(s) the Notice was published on the website.

(c) *Additional Notice Requirements:* This ordinance does not replace any statute or ordinance that requires notice by mail for public hearings or posting signs on property. Those methods of notification remain in effect.
(Ord. 2014-Code-01, 1-9-2014)

Secs. 2-3—2-28. Reserved.

ARTICLE II. MAYOR AND TOWN COUNCIL*

DIVISION 1. GENERALLY

Sec. 2-29. Regular, adjourned and recessed meetings.

(a) *Regular meeting.* The town council shall adopt a regular meeting schedule at its December meeting. This schedule shall outline the dates, times and locations of all regular town council meetings for the following year.

(b) *Adjourned and recessed meeting.* Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the town council.
(Code 1976, § 2-1; Code 1982, § 2-17; Ord. No. 86-7, § 1, 3-13-1986; Ord. No. 86-21, § 1, 6-12-1986)

State law reference—Notice of public meetings, G.S. 143-318.12.

Sec. 2-30. Adjournment for lack of quorum.

If a quorum is not present, a meeting of the town council shall stand adjourned to the next regularly scheduled town council meeting.
(Code 1976, § 2-5; Code 1982, § 2-18)

State law reference—Quorum, G.S. 160A-74.

Sec. 2-31. Mayor—Duties generally.

The mayor shall:

(1) Keep himself informed as to the town's business.

(2) Execute official documents for the town.
(Code 1976, § 2-22; Code 1982, § 2-19; Ord. No. 77-37, 10-13-1977)

Charter references—Election of mayor, § 3.2; mayor's authority to vote § 3.3.

Sec. 2-32. Same—General duties at meetings.

At the hour appointed for the meeting of the town council, the mayor shall take the chair and direct the clerk to note the absentees. The mayor shall preserve order and decorum. He shall decide all questions of order.
(Code 1976, § 2-6; Code 1982, § 2-20)

***Charter reference—**Mayor, town council and appointees, art. III.

State law references—Mayor and town council, G.S. 160A-59—160A-82; meetings of public bodies, G.S. 143-318.9 et seq.

Sec. 2-33. Same—Appointing of special committees; vacating the chair.

The mayor shall appoint all special committees, including those comprised of elected officials, except where the council shall otherwise order. He may, when present, appoint any member of the council to perform the duties of the chair, but such substitution shall not extend beyond adjournment, except by special consent of the town council, nor shall it affect his right to vote.
(Code 1976, § 2-15; Code 1982, § 2-21)

Sec. 2-34. Mayor pro tempore.

The mayor pro tempore shall perform the duties of the mayor in the event of the absence of the mayor, or in case of sickness of the mayor or other causes which would prevent the mayor from attending to the duties of the office.
(Code 1976, § 2-7; Code 1982, § 2-22)

Sec. 2-35. Motions; prerequisites to consideration.

No motion shall be considered or put at a council meeting until seconded and shall be reduced to writing by the member making it upon the request of the presiding officer or any other member. It may be withdrawn at any time before decision, commitment or amendment.
(Code 1976, § 2-14; Code 1982, § 2-24)

Sec. 2-36. Election by ballot.

All elections by the council shall be made by ballot if required by any two members present, and all votes shall be by yeas and nays and shall be entered upon the records on request of one member. Provided, that no election, appointment or motion shall be valid or adopted unless a quorum is present and voting.
(Code 1976, § 2-16; Code 1982, § 2-25)

Sec. 2-37. Effective date of ordinances.

Every ordinance enacted by the town council and filed in accordance with state law shall be in force from its passage, unless otherwise ordered or otherwise provided by state law.
(Code 1976, § 2-21; Code 1982, § 2-26; Ord. No. 77-37, 10-13-1977)

State law reference—Ordinances, G.S. 160A-75 et seq.

Sec. 2-38. Resignation of member.

No member of the town council shall be allowed to tender a resignation of his office except in writing.
(Code 1976, § 2-17; Code 1982, § 2-27)

Sec. 2-39. Agenda.

The business to be transacted before the town council shall be governed and regulated by an agenda prepared by the town clerk.
(Code 1976, § 2-9; Code 1982, § 2-41; Ord. No. 89-25, § 1, 2-23-1989)

Secs. 2-40—2-70. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Sec. 2-71. Contracts; conflict of interest.

No officer or employee of the town, appointed or elected, shall undertake any venture, or make any contract, for his own benefit, under his official authority, or be in any manner concerned or interested in making such contracts, or in the profits thereof, unless authorized by the town council and not in conflict with G.S. 14-234 and any other applicable state or federal law or regulation.
(Code 1976, § 2-31; Code 1982, § 2-58; Ord. No. 2018-Code-02, § 1, 6-28-2018)

Secs. 2-72—2-75. Reserved.

Editor's note—Ord. No. 06-008, adopted April 27, 2006, repealed §§ 2-72—2-75 in their entirety. Formerly, said sections pertained to the duties of the town manager, town attorney, town clerk and town treasurer, respectively, as enacted by Code 1976, §§ 2-23—2-25; as subsequently amended. The users attention is directed to the Town Charter for similar provisions.

Secs. 2-76—2-86. Reserved.

DIVISION 2. PERSONNEL

Sec. 2-87. General provisions.

(a) *Purpose.* The purpose of this article is to establish a fair and uniform system of personnel administration for all employees of the town under the supervision of the town manager. Nothing contained in this article should be construed as creating any type of employment contract between or among the town and any of its employees, either express or implied. Additionally, nothing contained in this article shall restrict the town's right to unilaterally change the policies, practices and procedures described herein. While, in the normal course of events, the town intends to follow the provisions set forth in this article, in whole or in part, and other policies, practices and procedures affecting personnel, certain situations may occur in which the town, at its sole discretion, will not follow this division unless otherwise required by law.

[Next printed page is page CD2:19.]

*__Charter reference—__Mayor, town council and appointees, art. III.

(b) *Personnel ordinance and plans.* The town council is responsible for approving this division, the position classification plan and the salary plan.

(c) *Administration.* The town manager is the head of the administrative branch of town government and is directly responsible to the town council for the administration of town affairs. The town manager is the final authority for directing the activities of all classified employees; therefore, the town manager shall establish personnel policies, practices and procedures as necessary, provided these are not in conflict with the town charter, town code, federal or state laws.

(d) *Human resources department.* There shall be a human resources department, under the supervision of the town manager, which has continuing responsibility and authority with respect to personnel matters. The town manager may delegate to the human resources department the responsibility for various functions as he/she sees fit. It has primary responsibility for advising the town manager and employees on policies, rules, regulations, benefits and procedures, and maintaining all employee records. All employees shall have full access to the human resources department for the purposes described herein.

(e) *Employee organizations.* The town recognizes the right of its employees to belong or not to belong freely and without discrimination to any organization whose purpose, existence or activities are not in conflict with a local, state or federal law.

(f) *Application.* The personnel ordinances and plans and all policies, practices and procedures adopted pursuant to them shall be binding on all town employees who are under the direction of the town manager. Any employee failing to carry out the full implementation of these policies may be subject to disciplinary action.

(g) *Departmental policies, practices and procedures.* Due to operational requirements of the various town departments, each department is authorized to establish supplemental policies, practices and procedures applicable only to the personnel of that department. All such policies, practices and procedures shall be subject to the approval of the town manager, and shall not conflict with the provisions of this division, but rather supplement it.

(h) *Statement of affirmative action and equal employment opportunity policy.* The policy of the town is to foster, maintain and promote equal employment opportunity. Recruitment of applicants for town employment will actively provide for measures to improve the diversity of the applicant pool. The town shall select employees on the basis of the applicant's qualifications for the job and award them, with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, national origin, nondisqualifying disability or political affiliation. Applicants with disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of essential job functions.

(i) *Implementation of affirmative action and equal employment opportunity policy.* All personnel responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices and procedures to assure that equal employment

opportunity based on reasonable, job-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, nondisqualifying disability, national origin or political affiliation.

(j) *Merit principle.* Appointments, promotions, and other human resource transactions shall be made solely on the basis of merit, except where organizational needs warrant other considerations. (Code 1982, § 2-63; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

Sec. 2-88. Position classification plan.

(a) *Purpose.* The position classification plan provides a complete and accurate description and specification for each class of employment within the town service. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities.

(b) *Full-time employees.* Full-time employees are those who are in positions for which an average work week over a one-month period of at least 37½ hours per week is required by the town.

(c) *Part-time employees.* Part-time employees are those who are in positions for which an average work week over a one-month period is less than 37½ hours per week.

(d) *Temporary employees.* Temporary employees are those who are in positions which are expected to last less than 24 consecutive months. Unless specifically included, the provisions of this division do not apply to temporary employees; however, the phrase "any employee" shall be deemed to include temporary employees.

(e) *Probationary employees and trainees.* All full-time and part-time employees hired into an authorized position and given a probationary appointment shall be considered probationary employees. A trainee is an employee not fully qualified to meet the requirements of a position, but who is expected to do so within a reasonable period of time.

(f) *Regular employees.* All full-time and part-time employees who have completed initial probation, as defined by section 2-91, shall be considered regular employees. The term "regular," as used in this division, specifically sections 2-87 through 2-96, shall not be construed to guarantee any employee continued employment.

(g) *Use.* The position classification plan is to be used:

(1) As a guide in recruiting and examining applicants for employment;

(2) In determining lines of progression and in developing employee training programs;

(3) In determining salary to be paid for various types of work;

(4) In determining human resource service items in departmental budgets; and

(5) In providing uniform job terminology.

(h) *Administration.* The town manager shall be responsible for the administration of the position classification plan, and shall periodically review the entire position classification plan. The human resources department, under the direction of the town manager, shall have continuing responsibility to assure that this plan is implemented.

(i) *Adoption.* The position classification plan shall be adopted by the town council.

(j) *Amendment.* Classes of positions shall be added to and deleted from the position classification plan upon approval of the town council, or the town manager, based on criteria established by the town council.
(Code 1982, § 2-64; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

Sec. 2-89. Salary plan.

(a) *Definition.* The salary plan includes the basic salary schedule and position authorization plan. The salary schedule consists of minimum and maximum rates of base salary for all classes of positions included in the position classification plan. The position authorization plan includes a complete inventory of authorized positions and a designation of the hours in the work week for each position. The salary schedule shall be adopted by the town council. A position authorization plan shall be adopted by the town council each fiscal year and may be amended during the fiscal year by the town council or by the town manager based on criteria established by the town council.

(b) *Pay rates in promotion, demotion, and transfer.* When an employee is promoted, demoted or transferred, the rate of salary for the new position will be established in accordance with the following rules:

(1) An employee who is promoted will receive a salary consistent with the provisions of subsection 2-91(g);

(2) An employee who is demoted will receive a salary consistent with the provisions of subsection 2-91(j);

(3) An employee who is transferred from a position in one class to a position in another class where the new position is assigned to the same salary grade as the old position will continue to receive the same salary.

(c) *Pay rates in salary range revisions and reclassifications.* When the town council approves a change in salary grade for a position or class of positions, the salaries of employees whose positions are reallocated are affected as follows:

(1) When a position or a class of positions is assigned to a higher salary grade, eligible employees in that class may receive a salary increase based on the pay for performance policy;

(2) When a position or a class of positions is assigned to a lower salary grade, the salary of any employee in that position or class will remain unchanged. If this assignment to a lower salary range results in an employee being paid at a rate above the maximum established

for the new class, the base salary of that employee shall be maintained at that level at least until such time as the employee's salary grade is increased above the employee's current salary and the employee is eligible for an increase.

(d) *Starting salaries.* All persons employed in positions contained in the position authorization plan shall be employed at the minimum salary for the classification in which they are employed, provided they possess the minimum qualifications required; however, on the recommendation of the department director and with the approval of the town manager, well-qualified applicants may be employed above the minimum rate.

(e) *Trainee salaries.* An applicant who is hired as a trainee, or an employee who is promoted to a trainee, may be appointed at a trainee rate. A trainee rate is normally at least five percent below the minimum rate of the assigned salary grade.

(f) *Performance appraisal.* Each employee will receive a performance review at times established by the town manager, but at least once a year. During this review, the employee and his/her supervisor shall discuss the employee's tasks and responsibilities and identify areas of good performance and areas for additional improvement. The supervisor shall document such review to the employee's human resource file, in a form approved by the town manager.

(g) *Anniversary dates for merit performance reviews.* Anniversary dates for performance reviews shall be established by the town manager for all employees. The anniversary date will remain unchanged by promotions and reclassifications, unless either action results in a salary increase of more than 15 percent. Interim appointments will not affect anniversary dates.

(h) *Performance awards.* When an employee becomes eligible for a performance award, such increase shall be the decision of the department director, based on the quality of the employee's performance and conduct and approved by the chief human resources officer as to the sufficiency of documentation, adherence to policies, and other technical and legal matters. The town manager will grant performance awards to department directors, upon eligibility and based upon their performance and personal conduct.

(i) *Reserved.*

(j) *Overtime.*

(1) Any employee of the town may be required to work the hours necessary to fulfill the needs of the town as determined by the town manager or department director. Any overtime hours must be approved, normally in advance, by the employee's supervisor.

(2) The town shall comply with minimum wage, overtime salary, recordkeeping and other applicable provisions, if any, of the Fair Labor Standards Act (FLSA). The town manager shall determine which positions are covered by the FLSA ("nonexempt") and which positions are not covered ("exempt") by the FLSA provisions concerning overtime.

(3) Any employees in nonexempt positions will be paid the regular rate of salary for hours worked up to the limit established by the FLSA for their positions (usually 40 hours in a seven-day period). Hours worked above the FLSA-established limit will be compensated at the appropriate overtime rate or through compensatory time.

(Code 1982, § 2-65; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-029, 6-26-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2010-Code-09, 12-16-2010; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 2-90. Recruitment, selection and appointment.

(a) *Recruitment sources.* When position vacancies occur, department directors shall notify the human resources department concerning the number and classification of positions which are to be filled. Certain vacancies may be made available only to current employees. The human resources department will publicize all other opportunities for employment, including applicable salary information and employment qualifications. Information on job openings and hiring practices shall be provided to recruitment sources, including organizations and news media available to minority applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within departments. Individuals shall be recruited from a geographic area as wide as is necessary to ensure that well-qualified applicants are obtained for town service.

(b) *Job advertisements.* Employment advertisements shall contain assurances of equal employment opportunity and affirmative action, and shall comply with federal and state statutes.

(c) *Applications for employment.* All persons expressing interest in positions for which the town is recruiting externally will be given the opportunity to file an application for employment.

(d) *Selection.* Department directors shall make such investigations and conduct such examinations as deemed appropriate to assess fairly the aptitude, education, and experience; knowledge, skill, and ability; and other qualifications required to perform the essential function of a job with or without reasonable accommodation. All selection devices administered by the town, or by persons or agencies for the town, shall be valid measures of job performance.

Pre-employment background checks may include criminal conviction record checks for all positions and additional verifications depending upon the position.

(e) *Employment procedure.* When a job opening occurs and the procedures set forth in this division have been completed, the human resources department shall then screen all applications for the position and identify the best qualified applicants for the department director or other designated supervisory personnel. The department director or supervisor, following standard procedures, shall interview the appropriate applicants.

(Code 1982, § 2-66; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998; Ord. No. 2007-11, 9-11-2007)

Sec. 2-91. Conditions of employment.

(a) *Employment of immediate family and close relatives.* "Immediate family" and "close relatives" are defined in subsection 2-92(q). The town prohibits the hiring and employment of immediate family and close relatives in authorized positions within the same work unit. The town

also prohibits the hiring of any person into a temporary or authorized position who is an immediate family member or close relative of individuals holding the following positions: Mayor, mayor pro tem, town councilmember, town manager, deputy town manager, assistant town manager, town clerk, town attorney, finance director or chief human resources officer. Otherwise, the town will consider employing families or related persons in the service of the town, provided that such employment does not result in immediate family or close relatives supervising relatives or having any responsibility for the payroll, hours of work, or human resource records of relatives, or for making any decision affecting the employment of a relative. Employment of individuals who are cohabiting or were formerly related, as defined by subsection 2-92(q), shall be subject to the same conditions as immediate family or close relatives. For the purpose of this division, "cohabiting" shall mean to live together in a sexual relationship when not legally married.

(b) *Probationary and trainee periods defined.*

(1) An employee who is newly appointed shall serve an initial probationary period of at least 12 months. "Initial probation" or "initial probationary period," where used in this division, shall mean within the current term of employment.

(2) An employee who is transferred, as provided in subsection (k), or promoted to an authorized position, as provided in subsection (g), shall also serve a probationary period of at least six months, except that new firefighters and law enforcement officers shall serve at least a 12-month probationary period.

(3) An applicant who is hired, or an employee who is promoted and who is not fully qualified to meet the established requirements of the position, may be appointed as a trainee.

(c) *Probationary and training periods: evaluations and recommendations.* The supervisor of a probationary employee or trainee shall accomplish and document the following at least every three months of employment:

(1) That there has been discussed with the employee the employee's accomplishments, failures, strengths and weaknesses;

(2) Whether the employee is performing satisfactory work;

(3) Whether the employee's conduct is satisfactory;

(4) Whether the employee should be retained in the position or whether the employee should be terminated or, if applicable, reinstated to his/her former position or one of comparable seniority, status and pay, if available and appropriate. Before the end of the probationary or training period, the supervisor shall make final evaluations and recommendations. Upon successful completion of the training period, trainees shall become probationary employees.

(d) *Probationary and training periods: discipline and appeal.*

(1) A probationary employee or a trainee who has not previously completed initial probation is not subject to the same disciplinary procedures as a regular employee. A probationary employee or a trainee who has not completed initial probation may be terminated without resorting to any of the steps outlined in section 2-95.

(2) Termination relating to job performance should normally be preceded by one or more counseling sessions to assist the employee in fulfilling the responsibilities of the position. Such counseling sessions are not a prerequisite to termination. Particularly, termination relating to personal conduct may occur without prior counseling or warning.

(3) A probationary employee or a trainee who has not previously completed initial probation and who is dismissed shall have the right to appeal through the grievance procedure only if alleging unlawful employment discrimination based on age, sex, race, color, religion, national origin, political affiliation or disability.

(4) A probationary employee or a trainee who had previously successfully completed initial probation during this term of employment is subject to disciplinary action up to and including dismissal in accordance with the provisions for a regular employee (section 2-95) and is entitled to the same process as a regular employee under the grievance procedure (section 2-96).

(e) *Promotions, interim appointments and special assignments of employees.*

(1) It is the policy of the town to encourage promotions from within the town work force whenever possible. Employees will be considered based on merit, job performance and personal conduct in current and previous town positions, and relevant experience and training. Interim appointments may be made by the town manager or department director if a vacancy or leave is reasonably anticipated to exceed 30 calendar days. Interim appointments will only be made if the employee will spend a significant portion of time performing higher level duties. Interim appointments may be terminated by the town at any time.

(2) Special assignments are long-term temporary assignments where the duties differ significantly from those duties typical in the employee's normal job classification. Special assignments may be terminated by the town at any time for any reason. Special assignments are authorized by the town council.

(f) *Promotion, interim appointments and special assignments; salary.* When an employee who meets all established requirements is promoted to a position in a higher salary grade, the employee's salary will normally be increased to the minimum level for the new pay range, or at least the equivalent of a five-percent increase. Employees receiving interim appointments to positions in a higher salary grade, or special assignments at a higher level, may be granted a salary increase which will not affect anniversary dates and will be rescinded upon the expiration of the interim appointment or special assignment.

(g) *Promotion; probationary conditions.* An employee who is promoted shall be considered on probation for the purposes of evaluation, but shall not be denied any of the employee benefits that would be provided if the promotion had not occurred. The probationary period shall last at least six months, except for newly appointed firefighters and police officers, who shall be on probation at least 12 months. If, at any time during the probationary period, the promoted employee's work performance is found to be unsatisfactory, the disciplinary procedure for evaluation as set forth in subsections 2-95(a), (b), (c), and (d) will be followed. To avoid termination, the employee may be reinstated in the employee's former position or one of comparable seniority, status and salary, if available. If no such position is available, the employee may be terminated. Before the end of the probationary period, the supervisor shall make the evaluations and recommendation as required by the provisions of subsections (c) and (d).

(h) *Outside employment.* An employee's work and interests of the town will take precedence over all other occupational interests of employees. All outside employment for salaries, wages or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the department director. The department director will review such employment for possible conflict of interest then submit a record of the employment and review to personnel. Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

(i) *Demotion: disciplinary, voluntary, administrative.* Any employee whose work performance is unsatisfactory or personal conduct is detrimental may be transferred to a position in a lower salary grade if the employee possesses the qualifications necessary for performance in the new position. Such a disciplinary demotion should normally be preceded by the warning procedures outlined in section 2-95. When a transfer to a lower level position is not acceptable to the prospective department director, an employee may instead be given a within-grade salary reduction. A voluntary demotion may be requested by an employee at any time but must be approved by the town. An administrative demotion may be imposed by the town when the safety or health of the employee, public, or co-workers is at serious risk.

(j) *Pay rate for demotional transfer.* When an employee is transferred to a position in a lower salary grade for which the employee is qualified, the salary shall be set at the rate in the new pay range which provides the smallest or no decrease in salary, provided the action is taken for reasons other than discipline. If the action is for disciplinary purposes, the salary shall be set at an appropriate point in the lower range that is less than the existing salary.

(k) *Transfer.* Any employee of the town may be transferred to another position in the same department, or in another department of the town, if approved by the town manager. The employee shall not be denied any of the employee benefits that would be provided if the transfer had not occurred; however, if the transfer results in a change in department or classification, or is for disciplinary purposes, then the employee shall serve a probationary period as provided for by the provisions of subsection (b)(2).

(l) *Rehiring.*

(1) An employee who resigns while in good standing may be rehired with the approval of the town manager, and will be regarded as a new employee subject to all the provisions of this division.

(2) An employee in good standing who is terminated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position. An employee who is terminated due to a reduction in force and is then rehired within two years shall have his/her sick leave balance and vacation accrual rate reinstated.

(m) *Acceptance of gifts and favors.* No official or employee of the town shall:

(1) Accept any gift, favor or thing of value that may tend to improperly influence or be perceived to improperly influence such employee in the discharge of the employee's duties; or

(2) Grant in the discharge of duty an improper favor, service, or thing of value.

(n) *Political activity restricted.* Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, and may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and America; however, no employee shall:

(1) Engage in any political or partisan activity while on duty;

(2) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;

(3) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;

(4) Coerce or compel contributions from another employee of the town for political or partisan purposes;

(5) Use any supplies or equipment of the town for political or partisan purposes;

(6) Be a candidate for nomination or election to office under the town charter.

Any violation of this section shall subject such employee to dismissal or other disciplinary action.

State law reference—Other restrictions on political activity, G.S. 160A-169.

(o) *Additional conditions of employment for the deputy town manager, assistant town manager and department directors.* Any deputy town manager, assistant town manager, or department director may be terminated without following the process outlined in section 2-95 of this article. The town manager shall advise the town council of his intentions prior to terminating a covered employee under this provision. Such a termination may be recorded as a resignation and will entitle a covered employee who has completed initial probation to severance pay based on the following:

Continuous years of town service	*Weeks of severance pay*
Less than 2	4
2 or more, but less than 5	8
5 or more	12

Employees age 40 or older on the effective date of severance will receive an additional four weeks of severance pay. All such severance pay is in addition to any other benefits to which the employee is otherwise entitled and is contingent upon the employee agreeing to such terms and conditions of severance as the town may deem appropriate. Severance pay does not include any type of pay other than base pay.
(Code 1982, § 2-67; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 93-34, § 1, 9-23-1993; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-029, 6-26-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2010-Code-09, 12-16-2010; Ord. No. 2018-Code-04, 8-23-2018; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 2-92. Employee benefits, holidays and leaves of absence.

(a) *Eligibility.* All regular and probationary employees, as well as trainees employed by the town and other employees, as specifically provided herein, are eligible for employee benefits provided for in this section which are subject to change at the town's discretion (see also subsection 2-63(a)). Temporary employees, whether full-time or part-time, are only eligible for workers compensation, family and medical leave subject to the provisions of the family and medical leave policy, and participation in the Local Government Credit Union subject to credit union rules and regulations.

(b) *Group health plans.*

(1) The town will make reasonable effort to provide full-time employees with at least one group health plan, including family coverage, and to pay the total individual cost for the individual employees enrolling in that plan. Employees will pay all or a portion, as determined by the town council, of the cost of coverage for qualified dependents if the individual employee desires such coverage.

(2) Part-time employees may, if they so desire, purchase available group health through the town, either for themselves or for themselves and their qualified dependents. A pro rata amount of the cost of coverage paid for a full-time employee shall be paid for by the town, with the remainder of the cost being paid by the employee. This pro rata amount shall be based on regularly scheduled hours.

(3) Employees who retire may remain on a town group health plan to Medicare eligibility or age 65, whichever comes first. Retirees are eligible for a payment towards the retiree's individual health insurance premium based on criteria established by Town Council.

(4) Information concerning cost and benefits shall be available to all employees through the human resources department.

(c) *Local Government Employees' Retirement System.* Each employee who is required to work for the town more than 1,000 hours annually shall, as a condition of employment, join the Local Government Employees' Retirement System (LGERS) beginning with the date of hire. Employees who are already members of LGERS, the Teachers and State Employees Retirement System or other North Carolina retirement systems at the time they are hired, continue participation in LGERS.

(d) *Compensation for off-duty employees on standby status.* The town must provide certain critical services 24 hours a day, seven days a week. To ensure that employees with necessary skills are readily available, the town places some off-duty employees on standby status and provides town council-approved compensation for the inconvenience created.

(e) *Tuition reimbursement.* Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time, whenever possible, which will improve their skills for their current job or prepare them for promotional opportunities within the town service. Tuition, registration fees, laboratory fees and student fees are eligible expenses and are subject to reimbursement according to current standard procedure. Satisfactory completion of the course will be required for reimbursement. (Also see subsection (dd), education leave, of this section.)

(f) *Paid leave policy.* The policy of the town is to provide vacation, sick leave, holiday leave, and certain other paid leaves to all full-time and part-time employees. Paid leave does not include leave while receiving short-term disability insurance or while receiving benefits under worker's compensation. An employee must work or be on paid leave for more than half the regularly scheduled hours in a biweekly pay period to accrue leave for that period.

(g) *Holidays.* The town designates the same paid holidays observed by the state and as may be amended by the state. Town staff will be notified of the schedule each calendar year. Holiday leave earned by employees having a work week with fewer hours than the basic workweek shall be determined in accordance with the formula set forth in subsection (v) of this section.

(h) *Effect of holidays on other types of leave.* Regular holidays which occur during a vacation, sick leave, or other paid leave period of any officer or employee of the town shall not be considered as vacation, sick leave, or other leave.

(i) *Holiday compensation.* An employee who works or is on paid leave the entire workday prior to and following a designated holiday will receive paid holiday leave. An employee of the town who is required to work on any designated holiday due to work schedule or at the direction of a supervisor is entitled to additional holiday compensation. The employee shall receive compensation at the regular rate for hours worked. In addition, such employee is also entitled to a choice of either compensation in the form of time off or pay, selected with the approval of the supervisor. Such compensation, whether in compensatory time or pay, shall be computed at a rate of time-and-one-half for the actual hours worked. Temporary employees, the deputy town manager, the assistant town manager, and all department and division directors shall be exempt from this provision. Departments with employees working 24 hours a day may elect to compensate those employees for working on the "true" holiday rather than the designated holiday.

(j) *Religious holidays.* Any employee of the town desiring to observe a religious holiday other than those designated shall be permitted to do so as determined by federal regulations. Such absences are accounted for through use of vacation or compensatory time, if available. Any such employee shall advise his or her immediate supervisor of the proposed leave at least one week in advance of that date, and the employee's work schedule should be adjusted accordingly to permit such observance.

(k) *Schedule for taking vacation.* Employees shall be granted use of earned vacation upon request, in advance in writing, at those times designated by the town manager or department director, which will least inconvenience normal operations of the town.

(l) *Unscheduled vacation.* Unscheduled vacation is vacation which is taken, but has not been approved in advance by the appropriate town official. Unscheduled vacation will be considered as an improper use of leave privileges and may subject an employee to disciplinary action as outlined in section 2-95.

(m) *Vacation leave: initial appointment, probationary employees and trainees.* Employees who have not completed initial probation may accumulate vacation leave; however, the employee shall not be permitted to take vacation leave unless the denial of such leave would create an unusual hardship or unless it is to be used as supplemental pay while on workers compensation. Vacation leave, except as a supplement to workers compensation, may be taken during this period only with the prior approval of the town manager. Firefighters and law enforcement officers shall be allowed to take accumulated vacation leave after six months' satisfactory service.

(n) *Vacation leave: rate.*

(1) Full-time employees working the basic workweek shall earn vacation leave at the following rates:

Years of aggregate service in an authorized position	*Hours earned in one year*	*Days earned in one year*
Less than 2	80	10
2 but less than 5	96	12
5 but less than 10	120	15
10 but less than 15	144	18
15 but less than 20	168	21
20 or more	192	24

(2) Vacation earned by employees having a workweek with greater or fewer hours than the basic workweek shall be determined in accordance with the formula set forth in subsection (v) of this section.

(3) With approval of the town council, the town manager can authorize a higher-than-vacation accrual when necessary to attract an applicant to a critical position during a tight labor market. Such accrual shall not exceed 24 days per year.

(o) *Vacation; maximum accumulation.*

(1) Vacation may be accumulated without any applicable maximum until the last day of the first full payroll period in June; however, if the employee separates from service, payment for accumulated vacation shall not exceed 240 hours. On the last day of the first full payroll period in June, any employee with more than 240 hours of accumulated vacation leave will have the excess amount converted to sick leave.

(2) Employees are cautioned not to retain excess accumulation of vacation until late in the fiscal year; due to the necessity of keeping all town functions in operation, large numbers of employees cannot be granted vacation at any one time. If any employee has excess leave accumulation during the latter part of the fiscal year and is unable to take such leave because of staffing demands, the employee will not receive special consideration, either in having vacation scheduled or in receiving any exception to the maximum accumulation.

(p) *Payment for accumulated vacation upon death.* The estate of an employee who dies while employed by the town will normally be entitled to payment for all the accumulated vacation credit to the employee's account, not to exceed a maximum of 240 hours; however, an employee may stipulate in writing to the human resources department to whom payment should be made in the event of death.

(q) *Sick leave.*

(1) Sick leave with salary is not a right that an employee may demand, but a privilege granted for the benefit of an employee when sick.

(2) Sick leave may be granted to an employee temporarily absent from work for any of the following reasons: Sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease when continuing work might jeopardize the health of others.

(3) Sick leave may be used when an employee must temporarily care for a member of his or her immediate family who is ill. Such leave is normally limited to 12 weeks total in any 12-month period. Sick leave may also be used for death in the employee's immediate family or the death of a close relative. For the death of an immediate family member, an employee may take up to five days of sick leave for any one occurrence. For a close relative, sick leave may not exceed three days for any one occurrence. Additional leave time required for any such occurrence may be charged to vacation. For the purpose of this section, "immediate family" is defined as wife, husband, mother, father, guardian, brother, sister, daughter and son. For the purpose of this section, "close relative" is defined as mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandson, and granddaughter. Also included in both definitions are the various combinations of "step," "half" and adopted relationships.

(4) Sick leave may also be used to supplement pay received under worker's compensation.

(5) Up to 80 hours of sick leave may be used singly or jointly by parents adopting a child.

(6) An employee on sick leave who, upon advice of a competent physician, is determined by the town to be unable to return to work and who is vested in the retirement system may continue to use accrued sick leave, provided that he/she is actively applying for service or disability retirement. Where the employee is not vested, the employee may exhaust sick leave accrued while employed with the town.

(r) *Sick leave rate and accumulation.* Sick leave shall accrue at a rate of one day per month of service or 12 days per each calendar year of service. Sick leave for employees whose workweek is less than full-time shall be calculated proportionately, as described in subsection (v) of this section. Sick leave shall accumulate without remittal for as long as that person remains an employee of the town.

(s) *Policy for taking sick leave.* Notification of the desire to take leave should be submitted to the employee's supervisor prior to the leave, but, in any event, not later than one hour after the beginning of the scheduled workday.

(t) *Physician's certificate.*

(1) The department director may require a physician's certificate stating the nature of the employee's or immediate family member's illness and the employee's capacity to resume duties for each occasion on which an employee uses sick leave. The employee may be required to submit to such medical examination or inquiry as the department director deems desirable. The department director shall be responsible for the application of this provision to the end that:

a. Employees shall not be on duty when they might endanger their health or the health of other employees; and

b. There will be no abuse of leave privileges.

(2) Claiming sick leave under false pretense to obtain a day off with salary shall subject the employee to disciplinary action.

(u) *Sick leave; retirement credit for accumulated sick leave.* Sick leave may be granted as retirement credit consistent with the provisions of the state local governmental employees retirement system.

(v) *Calculation of holiday leave, vacation and sick leave.* Holiday leave, vacation and sick leave earned by employees having a regularly scheduled workweek with fewer hours than the basic workweek shall be determined in accordance with the following formula. Vacation leave for employees having a regularly scheduled workweek with greater hours than the basic workweek shall also be determined by the following formula:

(1) The number of hours worked by such employees shall be divided by the number of hours in the basic workweek;

(2) The proportion obtained in step (1) shall be multiplied by the number of hours of leave earned annually by employees working the basic workweek;

(3) The number of hours in step (2) divided by 26 shall be the number of hours of leave earned biweekly by the employees concerned.

(w) *Workers compensation*.

(1) All employees of the town, whether full-time, part-time, regular, probationary or temporary, are covered by state workers compensation and are required to report all injuries arising out of and in the course of employment to their immediate supervisor, at the time of the injury, in order that appropriate action may be taken at once.

(2) Responsibility for claiming compensation under the workers compensation act is on the injured employee. The human resources department will assist the employee in filing the claim. An employee absent from duty because of sickness or disability due to an on-the-job injury and covered by the North Carolina workers compensation act (G.S. ch. 97) may receive workers compensation benefits. Regular employees, probationary employees and trainees may elect to use accumulated vacation and sick leave as a supplemental payment for the difference between regular salary and the payments received under the workers compensation act. The combination of workers compensation payments and pay from any supplemental leave shall not exceed the employee's normal base salary. Computation of salary rate for any leave taken shall be based on the employee's base salary rate.

(3) The town directs all medical treatment through its third party administrator. Unauthorized medical treatment is not covered.

(x) *Family, parental, maternity and medical leaves.* All employees who have met certain criteria are eligible for family and medical leave as prescribed by the family and medical leave act of 1993. Specific guidelines and employee notification requirements are outlined in separate town policies and procedures.

(y) *Leave without salary generally.*

(1) To ensure public accountability, the town normally does not pay employees for scheduled hours not worked when there is no leave time accrued or available which is appropriate to cover the absence. Leave without pay for employees who are exempt from the overtime provisions of the fair labor standards act will only be used in a manner which preserves the employee's exempt status. A regular employee may be granted a leave of absence without salary for up to one year by the town manager. The leave may be used for reasons of:

a. Personal disability after both sick leave and the desired amount of vacation has been exhausted;

b. Continuation of education or special work that will permit the town to benefit by the experience gained or the work performed; or

c. For other reasons deemed justified by the town manager.

(2) The employee shall apply in writing to the town manager for leave. The employee is obligated to return to duty with the town at the end of the time determined appropriate by the town manager. Upon returning to duty after being on leave without salary, the employee will normally return to the same position held at the time leave was granted or to one of like classification, seniority and salary. If the employee decides not to return to work, the

employee should notify the supervisor immediately. Failure to report at the expiration of a leave of absence, unless an extension has been approved, shall be considered a resignation.

(z) *Leave without salary: retention and continuation of benefits.* An employee shall retain all unused vacation and sick leave while on leave without salary. An employee ceases to earn leave when he/she works or is on paid leave one-half or less of the regularly scheduled hours in a pay period. The employee may continue to be eligible for benefits under the town's group health plans, subject to any regulations established by the respective insurance carriers and the provisions of the town's family and medical leave policy.

(aa) *Effect of absences on performance review dates.* An employee's merit review eligibility may be delayed one month for each calendar month the employee is on leave without salary, sick leave, workers compensation, absent while receiving short-term disability insurance, or any other combination of such absences more than one-half the scheduled hours in that month.

(bb) *Military leave.* An employee who is a member of an armed forces reserve organization or the national guard shall be granted two calendar weeks per year of leave with pay for military training. While on military leave, benefits will accrue as though present for duty. This leave is not charged as vacation; however, any salary payment which the employee receives from the military shall be deducted from the amount paid by the town.

(cc) *Civil leave.* An employee called for jury duty or as a subpoenaed court witness for the federal or state government, or a subdivision thereof, shall be entitled to leave with pay for such duty in addition to keeping fees received for such duty if the town is provided documentation for each day. An employee called as a witness in a private court case must take leave without pay, vacation, or compensatory leave.

(dd) *Education leave.* Education leave at full or part pay for a period not to exceed nine months may be granted to an employee with the approval of the town manager. If the educational leave exceeds 15 days or any equivalent in a period of one year, it shall also be approved by the town council. An employee granted educational leave with pay for a period of 15 or more days shall enter into a formal contract with the town, in which the employee agrees to return to the service of the town upon completion of the training and remain an employee of the town for a period equal to twice the educational leave which the employee received, or reimburse the town for all compensation received while on educational leave.

(ee) *Reinstatement generally.* An employee of the town who is on education, parental, sick or other authorized leave will normally be reinstated to the former position, or one comparable in seniority, status and salary, if such employee returns to town service at the expiration of such leave or authorized extension thereof. An employee who fails to return within the required time shall be considered as having voluntarily resigned.

(ff) *Reinstatement following military service.* An employee called to extended active duty with the United States military forces who does not volunteer for service beyond the period for which called shall be reinstated to the position he/she would have attained but for military service, provided the employee:

(1) Applies for reinstatement as provided for by law; and

(2) Is able to perform the essential functions of the former position with or without reasonable accommodation; or

(3) If unable to perform the essential functions of the former position with or without reasonable accommodation, due to disability sustained as a result of military service, but is able to perform the duties of another position in the service of the town, he/she shall be employed in such other position as will provide the nearest approximation of the seniority, status and pay which he/she otherwise would have been provided. Upon re-employment, an employee is entitled to benefits the individual would have attained, with reasonable certainty, had he or she remained continuously employed.

(gg) *Payment of leave upon separation.* Regular employees and probationary employees who have completed six months' satisfactory service and given a minimum required notice shall be paid for accumulated vacation not to exceed 240 hours. Employees who are dismissed, all in full or in part, for detrimental personal conduct or grossly inefficient job performance shall not receive pay for accumulated vacation. All employees, except department directors, the deputy town manager, and the assistant town manager, are paid for any accumulated holiday leave upon separation. Any employees also shall be paid for accumulated compensatory time earned while nonexempt from the overtime provisions of the fair labor standards act. All remaining sick leave shall end and terminate without compensation when an employee separates from town employment.
(Code 1982, § 2-68; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-013, 4-24-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2008-04, 3-13-2008; Ord. No. 2010-Code-09, 12-16-2010; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 2-93. Travel.

The town manager shall be responsible for establishing, administering, revising and maintaining a travel policy applicable to all town employees. Vehicles owned by the town will be provided to certain personnel for town business only and shall not be used for personal purposes. If a town vehicle is involved in an accident, either on public or private property, the police department, the appropriate supervisor, and the risk management specialist shall be notified immediately.
(Code 1982, § 2-69; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

Sec. 2-94. Separation.

(a) *Types.* All separations of employees from positions in the service of the town will normally be designated as one of the following types and will normally be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, unavailability, dismissal or death.

(b) *Resignation and notice.* An employee may resign by submitting in writing to his/her immediate supervisor the reasons for resignation and the effective date as far in advance as possible. The minimum notice requirement is two weeks, unless, by agreement prior to employment or promotion, a longer period has been specified. Failure to provide minimum notice shall result in payment for accumulated vacation leave being forfeited, unless the notice is waived upon recommendation of the department director and approval of the town manager. Employees may not

use leave in lieu of a notice. Three consecutive days of absence without reporting in the manner required by the department director may be considered to be a voluntary resignation without minimum notice.

(c) *Reduction in force.* Reduction in force may include deletion of a specific position or positions or overall reduction of town staffing. Where specific positions are no longer needed by the town, the incumbents, if any, shall be subject to the reduction in force. In the event that an overall reduction in force becomes necessary, primary consideration shall be given to organizational needs, as well as the quality of each employee's past performance, conduct, and seniority, in determining those employees to be retained. The town will determine how to weigh these factors in order to best serve the needs of the town. Employees who are laid off because of a reduction in force shall be given at least 30 days' notice of anticipated layoff. No employee shall be separated while there are temporary employees serving in the same class in the department, unless the employee is not willing to transfer to the position held by the temporary employee. An employee who has been reduced in force may be considered for internal job listings for a period of two years.

(d) *Disability.* An employee who cannot satisfactorily perform the essential functions of a job because of a physical or mental disability may be separated. If requested by the employee, the town and employee must first fully explore reasonable accommodation(s) which might permit the employee to resume satisfactory performance. Reasonable accommodation may include transfer to a different position. Action may be initiated by the employee or the town, but, in all cases, it must be accompanied by medical evidence acceptable to the town manager. The town may require an examination, at the town's expense, performed by a physician of the town's choice.

(e) *Voluntary retirement.* An employee who meets the conditions set forth under the provisions of the state local government employees retirement system may elect to retire and receive all benefits earned under the retirement plan.

(f) *Unavailability when leave is exhausted.* An employee may be separated if he/she becomes or remains unavailable for work after all applicable leave and benefits (not including COBRA) have been exhausted and management, for sufficient reasons, does not grant leave without pay.

(g) *Dismissal.* An employee may be dismissed in accordance with the provisions and procedures of this article.

(h) *Effective dates.* Resignations and dismissals shall normally be effective the last day actually worked. The effective date of these separations may not be a holiday, a vacation day, or a compensatory leave day; however, the effective date of separation for employees who are not returning from short-term disability, sick leave, or leave without pay or similar status will be determined individually. The effective date for an employee who dies shall be the date of death.
(Code 1982, § 2-70; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

Sec. 2-95. Disciplinary action.

(a) *Progressive discipline.* Progressive discipline is intended to encourage employees to make permanent corrections to performance deficiencies and minor problems relating to personal conduct. Progressive discipline may be based on repeated performance deficiencies or detrimental

personal conduct of the same or of a different nature. Progressive discipline shall involve consideration of all previous disciplinary actions, if any, whether for unsatisfactory job performance or for detrimental personal conduct. In determining the appropriate level of discipline for unsatisfactory job performance, consideration shall also be given to the time lapsed since the last warning for unsatisfactory performance or detrimental personal conduct, if any.

(b) *Disciplinary action for unsatisfactory or grossly inefficient job performance.* A regular employee may be placed on disciplinary suspension, demoted, or terminated for unsatisfactory job performance if, after following the procedure outlined in subsection 2-95(c), the employee's job performance is still deemed to be unsatisfactory. Employees may also be warned, suspended, demoted or terminated for grossly inefficient job performance, as outlined in 2-95(c). All cases of disciplinary suspension, demotion or termination must be approved by the town manager or his designee prior to giving final notice to the employee.

(1) Unsatisfactory and grossly inefficient job performance defined.

(2) Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the department director or the town manager. Examples of unsatisfactory job performance include, but are not limited to, the following:

a. Demonstrated inefficiency, negligence, or incompetence in the performance of duties;

b. Careless or negligent use of town property or equipment;

c. Discourteous treatment of the public or other employees;

d. Absence without approved leave;

e. Repeated improper use of leave privileges;

f. Repeated failure to report for duty at the assigned time and place; or

g. Failure to carry out supervisory responsibilities.

(3) Grossly inefficient job performance is a disregard for any aspect of an employee's job which results or could result in severe damage to town property, serious injury to or death of an employee or citizen, significant impact on town finances, or a loss of public confidence in town government. Examples of grossly inefficient job performance include, but are not limited to, the following:

a. Failure to wear required personal protective equipment or to observe other safety work rules.

b. Failure to follow standard procedures or practices which result in a significant loss of revenue to the town.

c. Failure to properly secure or protect town equipment or property which results in damage to that property or other property, or injury to an individual.

(c) *Procedure for disciplinary action for unsatisfactory or grossly inefficient job performance.*

(1) An employee's supervisor shall notify the employee of any deficiency in job performance and what is required for satisfactory job performance.

(2) An employee whose job performance is unsatisfactory should normally receive progressive warnings before disciplinary action resulting in dismissal is taken by the department director or the town manager; however, in cases of grossly inefficient job performance, an employee may receive a step 2 warning, a step 3 warning or may be dismissed without any prior disciplinary action. When appropriate, progressive warnings should include the following steps:

a. Step 1: one or more documented oral warnings from the employee's supervisor;

b. Step 2: A written warning to the employee from a supervisor, outlines the performance deficiencies and serves as notice that corrected performance must take place immediately in order to avoid a further disciplinary action, including demotion;

c. Step 3: A final written warning from a supervisor serving notice upon the employee that corrected performance must take place immediately in order to avoid further disciplinary action, including dismissal.

(3) A demotion to a lower salary grade or within grade may be imposed no earlier than step 3. A disciplinary suspension without pay may be imposed at step 2 or step 3 or in conjunction with a later warning.

(4) The supervisor shall record the dates of any discussions with the employee, the performance deficiencies discussed, the corrective actions recommended and any time limits set, and submit such information to the employee's permanent human resource file.

(d) *Disciplinary action for detrimental personal conduct.* With the approval of the town manager, an employee may be placed on disciplinary suspension, demoted or dismissed without prior warning due to personal conduct detrimental to town service in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. In less serious or less disruptive situations, steps similar to those listed under subsection 2-95(d) above may be in order. When an employee is suspended or dismissed immediately, the employee may be told to leave town property at once and either to report to a supervisor at a specific time or to remain away until further notice.

(e) *Detrimental personal conduct defined.* Detrimental personal conduct includes behavior, whether on-duty or off-duty, intentional or unintentional, of such a serious detrimental nature that the functioning of the town may be or has been impaired; the safety of persons or property may be or has been threatened; the laws of the government may be or have been violated; or public confidence in government is likely to be undermined. Examples of detrimental personal conduct include, but are not limited to, the following:

(1) Fraud;

(2) Conviction of a felony or the entry of a plea of nolo contendere thereto;

(3) Falsification of records for personal profit, to grant special privileges, or to obtain employment;

(4) Willful misuse or gross negligence in the handling of town funds;

(5) Willful or wanton damage or destruction to property;

(6) Willful or wanton acts that endanger life or property;

(7) Possession of unauthorized firearms or other lethal weapons on the job or bringing such onto town property;

(8) Communication of a threat or engaging in threatening behavior;

(9) Gross misuse or repeated personal use of town vehicles or equipment;

(10) Request for or acceptance of a gift or gifts in exchange for "favors" or influence;

(11) Engaging in or condoning sexual harassment or other prohibited harassment;

(12) Reporting to work, or working, under the influence of alcoholic beverages, narcotic drugs, or any other unlawful drug, or partaking or possessing of such while on duty;

(13) Withholding, misrepresentation or falsification of information necessary for the investigation of alleged violations of this Code when such information is requested by a supervisor, the town manager, or designee;

(14) Failure to comply with a reasonable order from an appropriate supervisor (insubordination);

(15) Flagrant behavior or repeated rude or uncivil behavior directed toward citizens or co-workers.

(f) *Disciplinary actions relating to special job requirements.* An employee may be placed on disciplinary suspension, demoted or dismissed without prior warning for failing to obtain or maintain a required license, certificate, registration or similar document, or for failing to maintain a satisfactory driving record when driving town equipment or vehicles is a job requirement.

(g) *Nondisciplinary suspension.* During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of civil action involving an employee, when suspension would, in the opinion of the town manager, be in the best interest of the town, the town manager may suspend the employee for the duration of the proceedings as a nondisciplinary action. Department directors may place an employee on nondisciplinary suspension in the absence of the town manager, when such employee's alleged actions constitute detrimental personal conduct. In such cases, the town manager or department director may:

(1) Relieve the employee temporarily of all duties and responsibilities and allow the employee no compensation for the period of the suspension; or

(2) Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities. If the employee is reinstated following the suspension, such employee may be restored any benefits to which the employee would otherwise have been entitled had the suspension not occurred; however, a written warning and a disciplinary suspension of 80 hours or less without pay may be imposed based on the extent to which the employee's behavior may have constituted detrimental personal conduct. If the employee is dismissed following the

suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits, with the exception of the accrual of vacation and sick leave, shall be maintained during the period of suspension.

(h) *Disciplinary suspension and deductions.*

(1) Any employee who is nonexempt from the overtime provisions of the FLSA may be suspended without pay, normally for one day, in conjunction with a step 2, step 3, or subsequent warning relating to performance of duties.

(2) Any employee who is exempt from the overtime provisions of the FLSA may be suspended without pay, normally for one day, in conjunction with a step 2, step 3 or subsequent warning on job performance involving any serious violation of safety rules relating to the prevention of serious danger to the town's property or to other employees. For performance problems not relating to safety, accrued vacation or holiday leave may be reduced, normally by one day.

(3) For nonexempt employees, suspension of 80 hours or less may be imposed, along with a written warning relating to detrimental personal conduct. For exempt employees to be suspended, the detrimental personal conduct must involve serious safety violations, or must be in one-week increments. In other cases of detrimental personal conduct, deductions of 80 hours or less may be made from accrued vacation or holiday leave of an exempt employee.

(4) All disciplinary deductions from accrued leave shall be considered the equivalent of a disciplinary suspension.

(i) *Predisciplinary conference and notification of disciplinary action.*

(1) When an employee is proposed to be placed on disciplinary suspension, demoted or dismissed, the town manager shall insure that the employee is given written notice of the proposed disciplinary action, advised of the evidence supporting the proposed action, and is provided with an opportunity to respond to the proposed disciplinary action. The employee's response shall be given due deliberation prior to making a final determination. Mechanical recording of all or any part of a conference or other meeting pertaining to the disciplinary action is prohibited without prior agreement of all parties subject to being recorded.

(2) At the time an employee is notified of any final disciplinary decision involving disciplinary suspension, involuntary demotion, or dismissal, or as soon as possible thereafter, the town manager shall insure that the employee is provided with written notice of the action taken, the effective date, the reason or reasons for the action, and the recourse, if any, available to the employee under the provisions of this article.

(j) *Employee appeal.* An employee who has completed initial probation or a probationary employee who alleges unlawful employment discrimination and who is disciplined may appeal the disciplinary action in accordance with the grievance procedure.

(Code 1982, § 2-71; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

Sec. 2-96. Grievance procedure.

(a) *Policy.* It is the policy of the town to provide a just procedure for the presentation, consideration and disposition of employee grievances. The purpose of this section is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

(b) *Definition and limitations.* A grievance is a claim or complaint by an employee based upon an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

(1) Appeals involving a disciplinary suspension, involuntary demotion, dismissal or suspension of driving privileges by the town are initiated at step 3 of the grievance procedure. All appeals must be filed within 20 calendar days of the date the final disciplinary decision is communicated to the employee.

(2) Grievances concerning performance evaluations or performance awards may only be appealed up to step 2 of the grievance procedure; however, department directors may appeal to the town manager.

(c) *Purposes.* The purposes of the grievance procedure include, but are not limited to, the following:

(1) Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;

(2) Encouraging employees to express themselves about the conditions of work which affect them as employees;

(3) Promoting better understanding of policies, practices, and procedures which affect employees;

(4) Increasing employees' confidence that human resource actions taken are in accordance with established, fair and uniform policies and procedures; and

(5) Increasing the sense of responsibility exercised by supervisors in dealing with their employees.

(d) *Procedure.* When an employee or a group of employees has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. The time limits at any step, however, may be extended by mutual consent or due to unusual circumstances beyond the reasonable control of either party. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. Mechanical recording of all or part of any meeting is prohibited without prior agreement of all parties subject to being recorded. While all parties are entitled to seek legal advice, attorneys may not be present at administrative or investigative meetings related to the grievance without the consent of all parties. At each step, the individual responding to the grievance is encouraged to consult with any

employee of the town, or others as appropriate, in order to reach a fair, impartial, and equitable resolution. All employees consulted during a grievance are required to cooperate to the fullest extent possible. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved in advance by the town manager.

(1) *Informal grievance.* The employee with a grievance is encouraged to resolve the grievance with the appropriate supervisor in an informal face-to-face meeting, before going on to the formality required in the following steps. Either the employee or the supervisor may involve the respective department director and/or chief human resources officer as a resource to help resolve the grievance. Using the informal grievance does not change the grievance deadline unless both parties mutually agree to an extension.

(2) *Formal grievance.* To be considered, a grievance must be filed within the time limit described in this section and must include the full basis for the employee's complaints, all information which supports the employee's position, and a statement outlining what the employee wishes to have happen as a result of the grievance.

a. Step 1: If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor in writing. The grievance must be presented within 20 calendar days of the event or within 20 calendar days of learning of the event or condition. The supervisor shall have a response to the grievance delivered to the employee within 20 calendar days after receipt of the grievance. The response shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The supervisor shall send copies of the grievance and answer to the human resources department.

b. Step 2: If the grievance is not resolved to the satisfaction of the employee by the supervisor, the employee may appeal, in writing, to the appropriate department director, within 20 calendar days after receipt of the response received in step 1. The department director shall respond to the appeal, stating his or her decision within 20 calendar days after receipt of the appeal. Such response shall be in writing and shall be signed by the employee to acknowledge receipt. The department director shall send copies of the grievance and the response to the human resources department.

c. Step 3: If the grievance is not resolved to the satisfaction of the employee at the end of step 2, the employee may appeal, in writing, to the town manager within 20 calendar days after receipt of the response received in step 2. The town manager shall respond to the appeal in writing. The response shall be signed by the town manager and hand-delivered or mailed to the employee within 20 calendar days of completing the review. A mailed response shall be sent by certified or registered mail with return receipt requested. The town manager's decision shall be the final decision.

(e) *Grievance and adverse action appeal procedure; unlawful employment discrimination.* Any applicant for town employment, town employee, or former town employee who has reason to believe that any employment action, including promotion, training, classification, pay, disciplinary warning, disciplinary suspension, transfer, demotion, layoff, or termination of employment was based on age, sex, race, color, national origin, religion, or disability has the right to appeal such action using the

grievance procedure outlined in subsection (d) of this article, if he or she so desires. While employees are encouraged to use the progressive steps outlined in the grievance procedure, employees claiming discrimination shall have the right to appeal directly to the town manager (refer to step 3 above). A failure to demonstrate that unlawful discrimination was the basis for the act shall render the balance of the appeal moot.

(f) *Back pay awards.* Back pay and benefits may be awarded to reinstated employees in disciplinary suspension, demotion, dismissal and discrimination cases.

(g) *Conflict with policies and regulations.* No decision or determination of any grievance shall in any way conflict with the town policies, resolutions, ordinances or statutes applicable thereto.
(Code 1982, § 2-72; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998; Ord. No. 2019-Code-04, 10-10-2019)

Secs. 2-97—2-107. Reserved.

ARTICLE IV. DEPARTMENTS

DIVISION 1. GENERALLY

Sec. 2-108. Department names; organization.

The town manager may create, change, abolish, and consolidate offices, positions, and departments of the Town and generally organize and reorganize Town government in order to promote orderly and efficient administration of town affairs, subject to the limitations contained in N.C.G.S. 160A-146. All references in this Code of Ordinances to a specific department or position shall be deemed to be a reference to any successor department or position, or to the department or position that has assumed responsibility for the subject matter of the relevant Code section.
(Ord. No. 2019-Code-04, 10-10-2019)

Secs. 2-109—2-128. Reserved.

DIVISION 2. DEPARTMENT OF INSPECTIONS AND PERMITS

Sec. 2-129. Created.

The department of inspections and permits is hereby created, and the executive official in charge thereof shall be known, and referred to in this article, as the "director."
(Code 1976, § 15-5; Code 1982, § 2-74)

Sec. 2-130. Right of entry.

The director or his agent shall make the inspections and tests necessary to obtain compliance with the Code. In cases of new construction, alterations or repairs, the right of entry upon any

premises for inspections and tests is absolute between the hours of 9:00 a.m. and 5:00 p.m. on any working day.(Code 1976, § 15-6; Code 1982, § 2-75)

Sec. 2-131. Stop orders.

Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner or in substantial violation of any building law of the state or town, or in such manner as to endanger life or property, the appropriate inspector may order the specific part of such work which is in violation or presents such a hazard to be immediately stopped. Such order shall be in writing to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor and the conditions under which the work may be resumed. Violation of a stop order shall constitute a misdemeanor.
(Code 1976, § 15-7; Code 1982, § 2-76)

Sec. 2-132. Records.

The department of inspections and permits shall keep official records of applications received, permits and certificates issued and fees collected. File copies of all papers in connection with building operations shall be retained in the official records as required by the municipal records retention and disposition schedule. Blueprints and plans of one- and two-family residences and miscellaneous work may be approved, stamped by the inspections and permits department and returned to the contractor at the time of issuance of the building permit. These approved plans must be kept on the job site at all times until the issuance of a certificate of compliance.
(Code 1976, § 15-8; ; Code 1982, § 2-77; Ord. No. 81-13, § 1, 9-24-1981)

Secs. 2-133—2-143. Reserved.

DIVISION 3. POLICE DEPARTMENT*

Sec. 2-144. Established.

The police department of the town is hereby established. It shall consist of a chief and as many police officers and other staff as the town council shall from time to time determine based on recommendation of the town manager.
(Code 1976, § 12-1; Code 1982, § 15-1; Ord. No. 03-002, 1-9-2003)

Sec. 2-145. Duties.

The police department shall carry out all orders of the town council, enforce all laws and ordinances of the town and the state and shall at all times preserve the peace, protect the property and the safety of the citizens of Cary.
(Code 1976, § 12-4; Code 1982, § 15-2; Ord. No. 03-002, 1-9-2003)

*__State law reference—__Law enforcement, G.S. 160A-281 et seq.

Sec. 2-146. Chain of command.

All officers and members of the police department shall be accountable to the chief.
(Code 1976, § 12-2; Code 1982, § 15-3; Ord. No. 03-002, 1-9-2003)

Sec. 2-147. Uniforms and equipment.

The chief of police and other police officers and members shall wear such uniforms and equipment as shall be issued or approved by the town and shall keep the same in a neat condition, and upon discharge, resignation or dismissal, surrender such uniform and equipment when the

same shall have been purchased by the town for their use. Police officers retiring in good standing may be authorized to keep certain uniform items or equipment pursuant to state law and town policy.
(Code 1976, § 12-5; Code 1982, § 15-4; Ord. No. 03-002, 1-9-2003)

Sec. 2-148. Duties of chief of police.

(a) The chief of police shall formulate a set of rules and regulations to govern the department and shall be responsible to the town manager for the personnel, morale and general efficiency of the department.

(b) The chief shall cause to be conducted a continuing program of training, including suitable drills and instruction and all other matters generally considered essential.
(Code 1976, § 12-3; Code 1982, § 15-5; Ord. No. 03-002, 1-9-2003)

Sec. 2-149. Police reserves.

Reserve police officers shall be called to active duty only on emergency or on special occasions when regular police officers of the town require their assistance and shall be subject to call of the chief, or designee, for training or other duty at other times. The chief of the police department is authorized to determine when the services of reserve police officers are required.
(Code 1976, § 12-6; Code 1982, § 15-6; Ord. No. 03-002, 1-9-2003)

Secs. 2-150—2-160. Reserved.

ARTICLE V. BOARDS AND COMMISSIONS AND AUTHORITIES

2-161. Boards and Commissions purpose statement.

The Cary Town Council recognizes and values the importance of citizen participation in local government. Two of Cary's value statements directly speak to this:

- Our organization exists to serve our citizens. We will be open, ensure access, encourage involvement and be accountable to our citizens.

- We will achieve the best results through effective teamwork, strategic partnerships and community participation.

To achieve these values, the Cary Town Council utilizes volunteer boards as a mechanism to engage citizens in the democratic process. The primary responsibility of these boards is to provide advice to the town council from a citizen perspective.

Sections 2-161 through 2-170 shall function as the basic Bylaws for all Town Boards and Commissions, along with the board or commission specific section 2-171 through 2-179 as set forth below.

Failure of the town, council or any board or commission to strictly comply with the provisions of this Article V shall not be grounds for claiming a procedural defect in any action taken.
(Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-162. General provisions.

(a) *Definitions.*

(1) ***Board.*** For the purposes of this article, the word "board" shall mean and include any board, commission, committee, agency or similar group made up in whole or in part of nonelected appointees of the town council, whether established by general statute, charter, ordinance, resolution, motion or otherwise. Notwithstanding the preceding, for special committees, task forces and the like this Article shall apply only as appropriate, and the mayor shall have appointment responsibility as provided in Town Code section 2-33.

(2) ***Board Year.*** Board year shall mean a 12-month time period beginning with the term effective date.

(b) *Use of provisions.* Unless otherwise required by North Carolina General Statutes, where any provision of this article conflicts with any provisions imposed elsewhere in the Code, the provisions of this article shall be deemed to be controlling.
(Code 1976, § 2-19; Code 1982, § 2-3; Ord. No. 77-37, 10-13-1977; Ord. No. 80-3, § 1, 1-24-1980; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2012-Code-05, 9-6-2012)

Sec. 2-163. Membership, general.

(a) *Membership eligibility and appointment process.* In order to be eligible for appointment to a board, a person must be 18 years of age or older and a Cary resident for the duration of the appointment term, unless otherwise expressly provided by law or ordinance, and must file an application on a form provided by the town clerk. Unless otherwise directed, or unless otherwise explicitly provided for elsewhere in this Code, all appointments to all boards, and all appointments of the chair of all boards, shall be made by the council as a whole, and neither the power to appoint nor the power to recommend persons for appointment shall be delegated to any board or to any committee of the council. Unless otherwise directed, no person shall serve on more than one board at the same time. No town employee shall be appointed to any board.

(b) *Unexpired terms.* The council intends to make appointments to fill unexpired portions of terms, created by vacancies, as expeditiously as needed. Further, the council recognizes that the urgency of filling such vacancies may vary depending upon the circumstances of the vacancy.

(c) *Removal.* All members of all boards shall serve at the pleasure of the town council, regardless of the terms for which appointed, and the town council may in its discretion at any time remove any members of any board for any reason, including inefficiency, neglect of duty, or malfeasance in office.

(d) *Resignations.* If a member concludes that he or she will have difficulty fulfilling the volunteer commitment, the member may voluntarily resign from the board. Notice should be communicated in writing to the town clerk's office. Members who have been removed from a board or who have resigned prior to completion of their term shall disclose such fact in any subsequent application for board appointment.

(e) More specific appointment procedures are found in Policy 162, process for appointments to volunteer boards and commissions. This Policy may be amended or repealed from time to time in accordance with council practices and procedures.

(f) Members who have resigned or been removed from office generally are not eligible for subsequent appointment to a board or commission unless good cause is shown.
(Code 1976, § 2-20; Code 1982, § 2-4; Ord. No. 77-37, 10-13-1977; Ord. No. 77-40, § 2, 10-27-1977; Ord. No. 79-2, § 1, 2-8-1979; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-164. Terms of office.

The terms of office of members of all boards shall be three years unless a vacancy is being filled, in which case a term may be one, two, or three years, depending on the remainder of the term. Terms on all boards shall be staggered, with the terms of approximately one-third of the membership expiring each year to ensure there is always one or more members with experience on each board. The term of office of the chair of each board shall be one year. All terms shall begin on October 1 following appointment. A person shall normally serve no more than two consecutive full terms on the same board; however, the council may waive this requirement on a case-by-case basis.
(Code 1976, § 2-19; Code 1982, § 2-3; Ord. No. 77-37, 10-13-1977; Ord. No. 80-3, § 1, 1-24-1980; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Charter reference—Terms of commissions, committees and boards, § 3.16.

Sec. 2-165. Conflicts of interest.

All board members shall read and be familiar with such laws, policies and guidelines as may be in effect from time to time concerning ethics and conflicts of interest for town advisory boards and commissions and shall sign such policies and guidelines of the Town as required by their terms. Refer to state law and policy statement 14,7 as revised from time to time in accordance with council practices and procedures, for the conflict of interest guidelines that apply to boards.
(Code 1976, § 2-19; Code 1982, § 2-3; Ord. No. 77-37, 10-13-1977; Ord. No. 80-3, § 1, 1-24-1980; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-166. Attendance at board meetings.

Although recognizing and appreciating the fact that members of the boards are generally citizen volunteers, the town council deems it essential that members of all town boards attend meetings regularly for the prompt and efficient transaction of town affairs. The staff liaison of each board shall maintain attendance records, including attendance at regular meetings, work sessions and all special called meetings. Members participating electronically in their meetings shall abide by Policy 150. If at any time during a board year any member misses three meetings (not including a meeting in which the member participated electronically according to Policy 150), that board member is responsible for notifying the deputy town clerk and the town council liaison to that board. The deputy town clerk shall include an item on the next available town council meeting agenda requesting that the council as a whole make a decision on this member's continued service on that board.

As a courtesy, prior to the town council's annual appointments to boards, the deputy town clerk shall review the attendance records and shall notify all board members who have missed three or more meetings in a 12-month board year that they must reapply if they wish to be considered by the town council to finish their original appointed term. Council will then consider the applications of those members during the normal selection and appointment process.
(Code 1982, § 2-5; Ord. No. 79-2, § 2, 2-8-1979; Ord. No. 91-6, § 1, 2-28-1991; Ord. No. 91-50, § 1, 12-12-1991; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2013-Code-01, 4-18-2013)

Sec. 2-167. Reimbursement for expenses.

All board members shall serve without compensation, but may be reimbursed for pre-approved expenses from funds allocated by the town council during the budget process.
(Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-168. Meetings.

All boards shall meet as often as necessary to conduct the business before it. All meetings and hearings of all boards shall be subject to the open meetings law.
(Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-169. Rules and records.

All boards shall adhere to Policy Statement 150, General Rules of Order, as amended from time to time in accordance with council practices and procedures, which includes the general parliamentary procedures for the board. Each board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or a member's absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.
(Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-170. Cooperation with others.

All boards shall cooperate in all respects with other town boards, town officials and employees.
(Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-171. Planning and zoning board.

(a) *Membership.* The planning and zoning board shall consist of nine members. Eight members shall be appointed by the town council and shall reside within the corporate boundaries of the town. The other member shall reside outside the corporate boundaries of the town but within the town's extraterritorial planning jurisdiction and be recommended by the town council for appointment by the county board of commissioners. All members shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within or outside of the town's corporate boundaries.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the planning and zoning board in the

absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the planning and zoning board members to serve as the chair of the planning and zoning board.

(d) *Amending section.* Amendments to this Section 2-171 shall be in accordance with the procedures set forth in N.C.G.S. § 160A-364.
(Code 1982, § 2-6; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006; Ord. No. 07-002, 2-8-2007; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2012-Code-05, 9-6-2012)

State law reference(s)—Planning board authorized, G.S. 160A-361.

Sec. 2-172. Zoning board of adjustment.

(a) *Membership.* The zoning board of adjustment shall consist of five members plus two alternates appointed by the town council. Six of the seven total members shall be appointed by the town council and shall reside within the corporate boundaries of the town. One member shall reside outside the town's corporate boundaries but within the town's extraterritorial planning jurisdiction and be recommended by the town council for appointment by the county board of commissioners. All members (including the alternates when serving in the absence or temporary disqualification of a regular member or to fill a vacancy) shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within or outside of the town's corporate boundaries. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(b) *Officers.* The town council shall appoint one member to serve as chair.

(c) *Board decisions.* As appropriate, decisions rendered by the board shall be recorded with the register of deeds in the county where the property subject to the decision is located.

(d) *Amending section.* Amendments to this Section 2-172 shall be in accordance with the procedures set forth in N.C.G.S. § 160A-364.
(Code 1982, § 2-7; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2012-Code-05, 9-6-2012; Ord. No. 2013-Code-04, 9-26-2013)

State law reference—Zoning board of adjustment, G.S. 160A-388.

Sec. 2-173. Parks, recreation and cultural resources advisory board.

(a) *Membership.* The board shall consist of ten members appointed by the town council. All members shall reside within the corporate boundaries of the town.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the parks, recreation and cultural

resources advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one member to serve as chair.

(d) *Other resources.* Policy Statement 148, parks, recreation and cultural resources committee structure policy, as amended from time to time in accordance with council policies and procedures, sets forth additional structure and appointment procedures for the committees affiliated with the parks, recreation and cultural resources advisory board.
(Code 1982, § 2-8; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-174. Historic Preservation Commission.

(a) *Membership.* The historic preservation commission shall consist of seven members appointed by the town council in accordance with the process set forth in Section 2-163 except as modified herein. All members shall reside within Cary's territorial jurisdiction. A majority of members shall have demonstrated special interest, experience or knowledge in history, architecture, or related disciplines such as planning, archaeology, landscape architecture, curation, or cultural anthropology. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(b) *Officers.* The town council shall appoint one member to serve as chair.

(c) *Terms of Office.* Member terms shall be three-year terms in accordance with Section 2-164 except that initial appointments to the newly established seven-member commission will be as follows: positions 1 and 2 will initially serve a four-year term, with three-year terms being assigned thereafter, positions 3 through 5 will be assigned three-year terms, with three-year terms being assigned thereafter, and positions 6 and 7 will be assigned two-year terms, with three-year terms being assigned thereafter in order to create staggered terms for the overall membership.

(d) *Board decisions.* As appropriate, decisions rendered by the Historic Preservation Commission shall be recorded with the register of deeds in the county where the property subject to the decision is located.

(e) *Amending section.* Amendments to this Section 2-174 shall be in accordance with the procedures set forth in G.S. § 160A-364.
(Ord. No. 2014-Code-03, 6-26-2014)

State law reference—Historic Preservation Commission, G.S. Chapter 160A, Article 19, Part 3C.

Sec. 2-175. Public art advisory board.

(a) *Membership.* The public art advisory board shall consist of nine members appointed by the town council. All members shall reside within the corporate boundaries of the town. The board shall be composed of representatives from local visual arts organizations, working artists, architects, private development interests, and the general public. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this advisory board.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the public art advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the members to serve as the chair.
(Code 1982, § 2-10; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-176. Reserved.

Sec. 2-177. Information services advisory board.

(a) *Membership.* The information services advisory board shall consist of ten members appointed by the town council. The board shall be composed of two members with special training or expertise in internet applications, development or design; two members with special training or expertise in marketing, advertising or public relations; and two members with special training or expertise in mass media such as radio, television, cable or newspaper and four other members from the private sector or general public. All members shall reside within the corporate boundaries of the town. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this advisory board.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the information services advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the members to serve as the chair.
(Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-178. Reserved.

Sec. 2-179. Environmental advisory board.

(a) *Membership.* The environmental advisory board shall consist of nine members appointed by the town council. All members shall reside within the corporate boundaries of the town. At least four members of the board shall have technical expertise working with environmental issues or partner associations with organizations that work with environmental issues. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this advisory board.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the environmental advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the members to serve as the chair.
(Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

Sec. 2-180. Reserved.

Chapter 3

RESERVED

Chapter 4

ALCOHOLIC BEVERAGES*

Article I. In General

Sec. 4-1. Definitions.
Sec. 4-2. Sunday sales.
Secs. 4-3—4-20. Reserved.

Article II. Beer and Wine License

Sec. 4-21. Qualifications.
Sec. 4-22. Application procedure; issuance of license.
Sec. 4-23. Refusal to issue or renew license.
Sec. 4-24. Suspension or revocation of ABC permit.
Sec. 4-25. Retail license.
Sec. 4-26. Wholesale license.
Sec. 4-27. Expiration.
Sec. 4-28. Objection to issuance of ABC permit.

***State law references—**Alcoholic beverages, G.S. ch. 18B; city beer and wine retail licenses, G.S. 105-113.77 et seq.

ARTICLE I. IN GENERAL

Sec. 4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant shall mean each of the persons associated with the business for which a malt beverage and fortified and/or unfortified wine license and/or mixed beverage is sought, as set forth in G.S. 18B-900(c).

Licensed premises shall mean a location that has been issued an ABC permit under G.S. 18B-1001 and an on-premises or off-premises malt beverage or fortified or unfortified wine or mixed beverage license under this chapter.

Malt beverage, wine, fortified wine, unfortified wine, mixed beverage, alcoholic beverage, person and sale shall be defined as these words are defined in G.S. 105-113.68. and 18B-101.

To sell shall mean to transfer, trade, exchange or barter in any manner or by any means for consideration.
(Code 1982, § 3-1; Ord. No. 94-004, 2-24-1994)

State law reference—State definitions, G.S. 18B-101.

Sec. 4-2. Sunday sales.

Pursuant to the authority granted by G.S. 160A-205.3, the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages shall be allowed within the corporate limits of the Town on Sundays beginning at 10:00 A.M. at any premises licensed pursuant to G.S. 18B-1001.
(Ord. No. 2017-Code-04, 7-27-2017)

Secs. 4-3—4-20. Reserved.

ARTICLE II. BEER AND WINE LICENSE*

Sec. 4-21. Qualifications.

To obtain a town malt beverage and fortified/unfortified wine or mixed beverage license, an applicant must submit an application on a form provided by the town, hold a valid corresponding ABC permit and pay the license tax.
(Code 1982, § 3-17; Ord. No. 94-004, 2-24-1994)

***State law reference—**Malt beverage and wine licenses, G.S. 105-113.77 et seq.

Sec. 4-22. Application procedure; issuance of license.

(a) *Application.* The application shall require the applicant to state whether the applicant has, during the preceding license year, committed any act or permitted any activity that would be grounds for suspension or revocation of the applicant's ABC permit under G.S. 18B-104. The application shall be sworn to (or affirmed) and signed by each person required to qualify under G.S. 18B-900(c), and the application shall be notarized.

(b) *Conditions for issuance.* If, from the statements and information provided in the application, the applicant appears to possess all requisite qualifications under law, including that the applicant holds the corresponding ABC permit, and the application includes a statement that the applicant has not, during the preceding license year, committed any act or permitted any activity that would be grounds for suspension or revocation of applicant's ABC permit under G.S. 18B-104, the applicable town malt beverage and wine license shall be issued by the town manager.

(c) *Renewal of license.* After the submission of the initial application and the issuance of a town malt beverage and fortified/unfortified wine or mixed beverage license, licenses may be renewed by submission of a renewal application, which form shall be provided by the town manager. The application shall require the applicant to state whether the applicant has, during the preceding license year, committed any act or permitted any activity that would be grounds for suspension or revocation of the applicant's ABC permit under G.S. 18B-104. The renewal application shall be sworn to (or affirmed) and signed by each person required to qualify under G.S. 18B-900(c), and the application shall be notarized.

(d) *Referral to town council.* If it appears, on the basis of the application or other information that comes to the attention of the town manager, that an applicant has, during the preceding license year, committed any act or permitted any condition that would be grounds for suspension or revocation of the applicant's ABC permit under G.S. 18B-104, the town manager shall not issue a malt beverage or fortified/unfortified wine or mixed beverage license, but shall make a written report of his or her findings to the town council. The town council shall make the determination of whether to issue a malt beverage and fortified/unfortified wine or mixed beverage license as set forth in section 4-23 below.
(Code 1982, § 3-18; Ord. No. 94-004, 2-24-1994)

State law references—Issuance duration and transfer of license, G.S. 105-113.70; local government may refuse to issue license, G.S. 105-113.71.

Sec. 4-23. Refusal to issue or renew license.

The town council may refuse to issue a license in accordance with G.S. 105-113.71.
(Code 1982, § 3-19; Ord. No. 94-004, 2-24-1994)

Sec. 4-24. Suspension or revocation of ABC permit.

The suspension or revocation of a state ABC permit shall automatically suspend or revoke the corresponding town malt beverage and fortified/unfortified wine or mixed beverage license.
(Code 1982, § 3-20; Ord. No. 94-004, 2-24-1994)

State law reference—Administrative penalties, G.S. 18B-104.

Sec. 4-25. Retail license.

The retail license shall be as provided in G.S. 105-113.77.

Sec. 4-26. Wholesale license.

Every person selling malt beverages or unfortified wine at wholesale, and either having a principal place of business within the town or maintaining one or more places of business or storage warehouses within the town, shall first procure from the town manager a malt beverage and wine wholesale license to engage in such business for each place of business or warehouse located within the town, and shall pay therefor an annual tax of $37.50. The phrase "person selling malt beverages or unfortified wine at wholesale" shall include owners or operators of distributing warehouses selling, distributing or supplying the enumerated beverages to retail stores.
(Code 1982, § 3-22; Ord. No. 94-004, 2-24-1994)

State law reference—City wholesale license, G.S. 105-113.79.

Sec. 4-27. Expiration.

Every license issued under this chapter shall expire on April 30 of each year.
(Code 1982, § 3-23; Ord. No. 94-004, 2-24-1994)

State law reference—Similar provisions, G.S. 105-113.70.

Sec. 4-28. Objection to issuance of ABC permit.

Upon receipt by the town of notice of the proposed issuance of a permit by the North Carolina alcoholic beverage control commission, the town manager may cause a thorough investigation to be made of the applicant for the ABC permit and of the premises for which the permit is being sought. The town manager may request the assistance and cooperation of the chief of police, the director of the department of planning and development, and other town officials and employees. The purpose of the investigation shall be to determine whether an objection should be made to the issuance of the permit, in accordance with the provisions of G.S. 18B-901.
(Code 1982, § 3-24; Ord. No. 94-004, 2-24-1994)

Chapter 5

RESERVED

Chapter 6

ANIMALS*

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Secs. 6-74—6-104. Reserved.

***State law references—**Municipal regulations as to animals, G.S.160A-182, 160A-186 et seq.; protection of animals, G.S. Ch. 19A; rabies, G.S. 130A-184 et seq.; animal shelters, G.S. 160A-493; animal taxes, G.S. 160A-212; cruelty to animals, G.S. 14-360 et seq.

Article IV. Reserved

Secs. 6-105—6-131. Reserved.

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Sec. 6-141. Notice.

ARTICLE I. IN GENERAL

Sec. 6-1. Purpose.

Pursuant to authority granted by the North Carolina general assembly, this animal control chapter is enacted to regulate, restrict or prohibit, if necessary, animals; to protect the public from unvaccinated, diseased, stray, roaming, dangerous, wild or exotic animals; to make unlawful acts of animals that interfere with the enjoyment of property or the peace and safety of the community; to protect animals from abuse or conditions harmful to their well-being; and to carry out any other lawful duties authorized by state laws and applicable ordinances.
(Code 1982, § 4-1; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-2. Jurisdiction.

This chapter applies within the corporate limits of the town of Cary.
(Code 1982, § 4-2; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-3. Definitions.

For the purposes of this chapter, the following words and phrases are defined and shall be construed as set out below, unless it is apparent from the context that a different meaning is intended:

Abandon means to intentionally, knowingly, recklessly or negligently leave an animal at a location for more than 48 consecutive hours without providing for the animal's continued care.

Adequate feed means the provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foodstuff shall be served in a sanitized receptacle, dish, or container.

Adequate shelter means an enclosure sufficient to provide shelter from extremes of weather and a means to remain cool, dry and comfortable. Adequate shelter should consist of at least three solid sides, a roof and a floor with bedding be ventilated and have sufficient room for an animal to move about freely and lie down comfortably.

Adequate water means the provision of, or ready access to, a supply of clean, fresh, potable water provided in a sanitary manner 24 hours a day.

Animal means every vertebrate nonhuman species of animal, wild or domestic, male or female, including, but not limited to, dogs, cats, livestock and other mammals, domestic fowl, birds, reptiles, amphibians and fish.

Animal control officer or *officer* means persons charged by the town with enforcing all sections of this chapter and applicable state laws.

Animal control shelter means any holding or other facility designated by the town manager, or designee, for the detention of animals.

Animal under restraint or *under restraint* means any animal confined within a vehicle; any animal confined, by means of a secure enclosure or an electronic enclosure, within the real property limits of its owner; or any animal secured by leash or lead, cage, bridle or similar physical restraint sufficient to allow the animal to be controlled. Electronic leashes or training collars do not constitute restraint.

At large means any animal found off of the property of its owner and not under restraint or any animal previously determined to be dangerous or potentially dangerous that is not under restraint when off the property of its owner, or is not confined to a secure enclosure while on the property of its owner. Any animal off the owner's property and on an electronic leash or training collar shall be considered at large.

Bees means all life-stages of the honey-producing insects of the genus Apis mellifera that are kept, and manipulated, and managed for commercial or non-commercial purposes.

Bite means the act of an animal seizing flesh with its teeth or jaws, so as to tear, pierce or injure the flesh.

Cats means domestic felines.

Chicken means any of the common domestic birds or fowl of the species Gallus gallus domesticus whose eggs or flesh are used for food. Also referred to as "poultry." The female bird is called a "hen."

Dangerous animal means any animal (other than a dog) whose behavior creates a reasonable risk of injury to a human or animal or damage to personal or real property. This behavior includes, but is not limited to, an animal's biting or attacking or attempting to bite or attack a human or other animal, provided however, this definition shall not apply to any animal that has been subject to provocation nor shall it apply to any animal responding to a trespass, as trespass is defined in this chapter, upon the animal owner's premises, if the victim is the trespasser.

Dog means domestic canines.

Domestic animal means those species of animals that normally and customarily share human habitat in Wake County and are normally dependent on humans for food and shelter in Wake County, such as, but not limited to cats, dogs, cattle, horses, swine, domestic fowl, sheep and goats.

Domestic fowl shall include, but not be limited to, turkeys, geese, chickens, peacocks, guinea fowl, ratites, or ducks.

Electronic enclosure means underground electrical wire which, when used in connection with a pet collar or other device, keeps cats or dogs confined within the limits of the wire on private property. A sign that complies with the requirements of the Cary sign ordinance should be posted stating that an electronic fence is in use at the entrance to the driveway on the property.

Exotic or wild animal means any animal which is not usually and customarily kept as a pet or domestic animal. A hybrid of any such animal, regardless of genetic percentages, shall be deemed exotic or wild. Examples of exotic or wild animals include, but are not limited to, any animal for which a federal or state permit or license is required, and such animals as lions, tigers, wild cats, wolves, bears, apes, monkeys and raccoons. Included in this definition are venomous reptiles, large constricting snakes, alligators, or crocodilians.

Ferret means a domestic mammal of the genus, species, and subspecies Musteal putorious furo.

Immediately means at once, very close in time.

Impoundment means possession or seizure of an animal by the animal control unit for placement in the animal control shelter or other appropriate facility.

In estrus means a female animal in what is commonly called "heat".

Inoculation means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator.

Kennel, dealer, or breeder means any person, partnership or corporation engaged in buying, selling, breeding or boarding animals.

Livestock shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, alpacas, and swine.

Nighttime means the time each day from sunset until sunrise.

Owner means any person, group of persons, or any entity owning, keeping, harboring, possessing or acting as keeper or custodian of an animal for 72 hours or more, unless the animal is boarded for a fee at a duly licensed facility.

Owner's property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, cluster home, apartment complex, or townhouse development, nor does it include the common area of a subdivision or other housing project. A motor vehicle is not a part of the owner's property unless it is physically located on the area described in a deed of conveyance or the area described in a lease. A motor vehicle that is physically located in or on any common areas as described above, or on any other public areas shall be treated as being off of the owner's property.

Person means and includes any individual or any legal entity, including nonprofit corporations.

Poisonous reptile means any reptile, such as a snake or lizard, that has the capability of injecting humans or animals with venom which may cause death or physical injury.

Provocation does not include any actions on the part of an individual that pertain to reasonable efforts of self-defense, and provocation must be clearly established.

Secure enclosure means an enclosure from which an animal cannot escape by means of digging under or jumping over the enclosure, or otherwise becoming free unless freed by the owner. Neither a motor vehicle nor an electronic enclosure shall constitute a secure enclosure.

Severe injury means any physical injury that results in broken bones or disfiguring lacerations or requires cosmetic surgery, surgery, or hospitalization.

Trespass means that the victim has wrongfully invaded the property of the owner. The reason the individual is on the property and any other relevant circumstances shall be considered in order to determine whether or not a trespass has occurred. A child under the age of seven shall not be deemed to be a trespasser.

Weekdays means Monday through Friday, inclusive, excluding local, state and national legal holidays.
(Code 1982, § 4-3; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2008-Code-04, 10-16-2008; Ord. No. 2010-Code-08, 10-14-2010; Ord. No. 2012-Code-04, 8-23-2012; Ord. No. 2012-Code-06, 10-11-2012; Ord. No. 2016-Code-01, 2-25-2016)

Secs. 6-4—6-24. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 6-25. Animal control unit.

The police department is responsible for the enforcement of this chapter through its animal control unit (sometimes "unit"), and the nonsworn animal control officers employed therein, all of whom shall have all powers, responsibilities and immunities granted by law and this chapter, and as set forth in this chapter.
(Code 1982, § 4-4; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-26. Administration of unit.

(a) *Chief animal control officer.* The chief of police ("chief"), shall be the chief animal control officer charged with enforcing this chapter. The chief is authorized to initiate legal action to enforce this chapter. The chief may delegate any of the powers granted herein to any member of the animal control unit or the police department. Any act done by an animal control officer or a member of the police department that is within the scope of this chapter shall be considered the official act of the chief.

(b) *Animal control officers.* Animal control officers who have not taken or successfully completed the law enforcement education and training course as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission, pursuant to G.S. 17C-8 are "nonsworn animal control officers". Nonsworn animal control officers are not authorized to carry on their person any firearms, but are authorized to store at the animal control unit offices, or carry in departmental vehicles, firearms approved for use when necessary to enforce the provisions of this chapter or other applicable law for the control of wild, vicious, dangerous or diseased animals. Nonsworn animal control officers are authorized to store drugs, chemicals and equipment at the animal control unit offices as necessary to enforce the provisions of this chapter or other applicable law for the control of wild, vicious, dangerous or diseased animals. Nonsworn animal control officers shall not have the power of arrest, but shall have all rights, powers and immunities as described in this chapter. As nonsworn members of the unit only have that limited authority described in this chapter, a member shall not be considered a "policeman" for purposes of this Code relating to the policemen's and firemen's special relief fund, and shall not be eligible for benefits thereunder.

(c) Badges. Each member of the unit, while in the performance of duties, shall wear a badge of a size and design to be determined by the chief.
(Code 1982, § 4-5; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-27. General responsibilities of unit; personal liability of municipal officers, agents, employees.

(a) *Duties of unit.* The animal control unit is charged with the following:

(1) Enforcing and carrying out within the town the provisions of this chapter, any other ordinance assigning animal control duties, and all relevant state laws, and cooperating with the Wake County health department and other law enforcement agencies in so doing;

(2) Canvassing the town, including dwellings, businesses and institutions in the town as necessary and practical, for the purpose of ascertaining that all dogs and cats in the town are duly licensed and adequately inoculated against rabies, and for the purpose of ascertaining compliance with this chapter and state statutes. In addition, employees may scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible;

(3) Investigating complaints with regard to animals or bees covered by this chapter and protecting animals from cruelty or abuse;

(4) [Reserved];

(5) Seizing, relocating and/or impounding, when necessary, any animals or bees in the town involved in a violation of this chapter or any other ordinance or state law;

(6) Going upon private property, and seizing animals or bees on public or private property pursuant to the provisions of this chapter, state statute or with the consent of an owner or occupant of the property; as evidence; by criminal or administrative warrant; or by order of a court of competent jurisdiction of this state;

(7) Keeping, or causing to be kept, accurate records of seizures, relocations, impoundments, dangerous animals, disposition of animals or bees coming into the custody of the animal control unit, bite cases, violations, complaints, investigations and monies collected;

(8) Issuing citations and orders and assessing civil penalties for violations of this chapter and when authorized by law.

(b) *Limited liability.* Except as may be otherwise provided by statute or local law or ordinance, no officer, agent or employee of the town charged with the duty of enforcing the provisions of this chapter or other applicable law shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties.
(Code 1982, § 4-6; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2010-Code-08, 10-14-2010; Ord. No. 2012-Code-06, 10-11-2012; Ord. No. 2019-Code-02, 9-12-2019)

Sec. 6-28. Inspection, interference or concealment.

(a) *Inspections.* Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or other applicable law, or whenever an animal control officer has reasonable cause to believe that there exists in any building or upon any premises any violation of this chapter or other applicable law, the animal control officer is empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon them by this chapter or other applicable law, but only if the consent of the occupant or owner of the property is freely given or an administrative search warrant or criminal search warrant is obtained as follows:

(1) If such property is occupied, the animal control officer shall first present credentials to the occupant and request entry, explaining the reasons therefor; or

(2) If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other persons having control of the property, present proper credentials and request entry, explaining the reasons therefor; and

(3) If entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be found after due diligence, an animal control officer may obtain an appropriate warrant to conduct a search, or inspection of the property or seizure on the property.

Notwithstanding any other provision of this chapter, an animal control officer shall have the authority to enter upon any land to enforce the provisions of this chapter, including the seizure of animals running at large, or other applicable law if a violation of such law is being committed in the presence of the officer and requires immediate action on the part of the officer to protect the health or safety of the animal or the public. In the case of animals at large, so long as the animal is within sight of the officer, this section shall not be interpreted to require that a warrant be obtained before seizing the animal.

(b) *Interference.* It shall be unlawful for any person to interfere with, hinder, molest, resist or obstruct employees of the animal control unit while they are carrying out any duty created under this chapter or other applicable law.

(c) *Concealment of animal.* It shall be unlawful for any person to conceal, for the purpose of evading the licensing requirement, permit requirement, rabies inoculation requirement or other requirements of this chapter or any applicable law, any unlicensed, uninoculated, nonpermitted or other unlawful animal from any employee of the animal control unit.

(d) *Concealment of license, etc.* It shall be unlawful for any person to refuse to show proof of a license, permit or a rabies inoculation to any employee of the animal control unit upon request.

(e) *Unauthorized release.* It is unlawful for any person to seek to release, attempt to release, or to release any animal in the custody of the animal control unit, except as otherwise specifically provided in this chapter. An animal captured in a trap set by the animal control unit shall be deemed to be in the custody of animal control.
(Code 1982, § 4-7; Ord. No. 01-022, § 1, 11-8-2001)

Secs. 6-29—6-59. Reserved.

ARTICLE III. VIOLATIONS

Sec. 6-60. Bird sanctuary.

(a) *Town designated as sanctuary.* The area within the corporate limits of the town and all land owned or leased by the town outside the corporate limits is hereby designated as a bird sanctuary, as authorized by G.S. 160A-188.

(b) *Unlawful to trap, etc.* It shall be unlawful intentionally to trap, hunt, shoot, or otherwise kill, within the sanctuary hereby established, any native wild bird, except those birds classes as a pest under article 22A of chapter 113 of the General Statutes (G.S. 113-300.1 et seq.) and the Structural Pest Control Act of North Carolina of 1955 (G.S. 106-65.22 et seq.) or the North Carolina Pesticide Law of 1971 (G.S. 143-434 et seq.), pursuant to an appropriate permit issued by the North Carolina wildlife commission.
(Code 1982, § 4-8; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2010-Code-02, 3-10-2010)

Sec. 6-61. Abandoned animals.

(a) *Unlawful to abandon.* It shall be unlawful for any person owning, possessing or harboring an animal to abandon that animal.

(b) *Seizure.* If the animal control unit finds that an animal has been abandoned, the animal may be impounded. If the animal has been abandoned in a house or within a fenced area, the unit must make a reasonable effort to locate the owner or manager of the property. If the property owner or manager is not the animal owner, then the unit shall secure permission to remove the animal from the person who occupies the property. If the person who occupies the property is the animal owner and cannot be located or refuses to give permission to remove the animal, the division shall secure an appropriate warrant to seize the animal.

(c) *Impoundment.* An animal seized pursuant to this section shall be impounded as provided in section 6-134. If the owner contacts the unit to reclaim the animal, an explanation for the animal's abandonment must be provided to the satisfaction of the chief before the animal is returned to the owner. If the animal is unclaimed by its owner after being held for the minimum period specified in section 6-135, the animal shall be disposed of as provided in section 6-137.
(Code 1982, § 4-9; Ord. No. 01-022, § 1, 11-8-2001)

State law reference—Abandoned animals, G.S. 14-361.1.

Sec. 6-62. Chickens, ducklings, rabbits banned from sale; livestock, domestic fowl generally prohibited.

(a) *Chickens, ducklings, rabbits banned from sale.* It shall be unlawful for any person to sell or offer for sale, or permit to be sold or offered for sale, within the corporate limits of the town, baby chickens, baby ducklings, or baby rabbits less than six weeks of age; provided, this section shall not apply to hatcheries raising chickens or ducks expressly for the broiler market or for sale to farms.

(b) *Livestock and domestic fowl prohibited.* Livestock and domestic fowl of all descriptions are prohibited within the corporate limits of the town except: as expressly permitted as an accessory use in the Land Development Ordinance, Appendix A of the Town of Cary Code of Ordinances.

(c) *On-site slaughter of chickens prohibited.* It shall be unlawful for any person to slaughter chickens on any residential property in the town.
(Code 1982, § 4-10; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2012-Code-04, 8-23-2012)

State law reference—Disposing of living baby chicks or other fowl, or rabbits under eight weeks of age as pets or novelties, G.S. 14-363.1.

Sec. 6-63. Exotic or wild animals.

(a) *Notification.*

(1) For the purpose of this section "notify" means calling the animal control unit during normal business hours, or the police department during non-business hours, and speaking with a staff member.

(2) At least 24 hours prior to importing, locating or placing an exotic or wild animal within the corporate limits of the town, the owner of the animal shall notify the animal control unit or the police department. At the time of notification, the owner shall also provide copies of any required federal or state permits for the exotic or wild animal.

(3) Immediately (and in no event beyond one hour) following any of the following incidents involving an exotic or wild animal, the owner of the animal shall notify the animal control unit (or the police department) about the incident:

a. An assault, attack or biting upon any human being committed by an exotic or wild animal;

b. An attack or biting upon any domesticated animal or pet by an exotic or wild animal if the injured domesticated animal or pet is not also the property of the owner of the exotic or wild animal;

c. The destruction of, or damage to, property of any other person committed by an exotic or wild animal;

d. The roaming or escape of an exotic or wild animal that is required to be restrained or confined.

(b) *Permit required to own; confinement and control.* It shall be unlawful for any owner of any exotic or wild animal to keep or maintain any such animal within the town unless any required federal and/or state permits have been obtained and are currently valid for the time period and circumstances under which the exotic or wild animal will be maintained within the town, and the animal is:

(1) Confined within a humane and secure enclosure, as approved by the animal control officer, in accordance with humane practices; or

(2) Securely muzzled, if required, and under restraint by a competent person who, by means of a leash, chain, rope or other device suitable to adequately restrain the particular exotic or wild animal, has such animal firmly under control at all times.

(c) *Confiscation.* Any exotic or wild animal which is not properly restrained or secured as required by this section, or which has injured or endangered any person or property, or which does not have currently valid federal or state permits, may be confiscated by any animal control officer or police officer and kept and harbored at the expense of the owner determined to be in violation of this section.

(d) *Slaying of animal in certain circumstances.* Any exotic or wild animal which has escaped, is running at large, or is otherwise deemed to be a continuing threat to the public safety may be slain by any police officer or animal control officer if attempts to capture the animal are unsuccessful or if immediate capture is not practical or reasonably possible.

(e) *Penalty.* Notwithstanding any other provision of this chapter to the contrary, and in addition to confiscation of the animal as set forth above, violation of this section shall constitute a misdemeanor. A police officer or animal control officer may initiate the criminal process.
(Code 1982, § 4-11; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2008-Code-04, 10-16-2008)

Sec. 6-64. Defecation on streets and private property.

(a) *Public property.* It shall be unlawful for the owner of any animal to fail or refuse to remove feces deposited by the animal on any street, sidewalk, park or other publicly-owned area.

(b) *Private property.* It shall be unlawful for the owner of any animal to fail or refuse to remove feces deposited by the animal on any private property.
(Code 1982, § 4-12; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-65. Domestic animals at large.

It is unlawful for the owner of any domestic animal to allow such animal to be at large in the town or on any town property except that dogs may be unleashed in approved, designated areas inside Town of Cary Dog Parks.
(Code 1982, § 4-14; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 05-018, 12-15-2005; Ord. No. 2012-Code-04, 8-23-2012)

Sec. 6-66. Confinement of female dogs and cats in estrus.

Every female dog and cat, while in estrus, shall be confined in a building or secure enclosure in such manner that she will not be in contact with another dog or cat, as the case may be, nor create a nuisance by attracting other animals; provided, this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner of an animal being bred.
(Code 1982, § 4-15; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-67. Animal abuse prohibited.

(a) *Prohibited acts.* All animals shall be kept and treated under sanitary and humane conditions and it shall be unlawful for any person to engage in one or more of the following acts:

(1) Failing to provide adequate feed, water and shelter or failing to maintain the animal in a clean and healthy environment. All animals, unless otherwise indicated in this chapter, shall be given adequate feed, adequate water and adequate shelter. Outdoor enclosures should be no smaller than 100 square feet in area for each dog weighing less than 20 pounds. Each dog weighing 20 pounds or more should have an outdoor enclosure no smaller than 200 square feet in area. Examples of shelter that is not adequate include, but are not limited to the following:

a. Underneath houses, outdoor steps, decks or stoops, or underneath motor vehicles;

b. Inside metal barrels or cardboard boxes;

c. Shelters prone to flood;

d. Shelters surrounded by debris, obstructions or impediments that may endanger an animal;

e. Confinement of the animal in storage rooms, sheds or other buildings without windows and proper ventilation.

(2) Failing to keep an animal under sanitary and humane conditions which are not detrimental to the animal's health and general welfare and which maintain a condition of good order and cleanliness and reduce the possibility of transmission of disease.

(3) Failing or refusing to provide adequate medical attention for any sick, diseased or injured animal.

(4) Engaging in animal cruelty; animal cruelty means every act, omission, or act of neglect whereby unjustifiable pain, suffering or death is caused or permitted, or attempted to be caused or permitted against animals, and includes acts or attempted acts of beating, torturing, injuring, tormenting, mutilating, teasing, molesting, baiting, or harassing animals, the trapping of animals unlawfully, and overworking or overdriving animals. This shall not include the lawful taking of animals under the jurisdiction and regulation of the wildlife

resources commission, lawful activities of organizations or agencies conducting or sponsoring biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal.

(5) Promoting, staging, holding, managing, conducting, carrying on or attending any game, exhibition, contest, fight or combat between one or more animals or between animals and humans, or intentionally allowing animals to engage in a fight.

(6) Permitting any exhibit, function or activity where animals are being cruelly treated or animals run the risk of causing injury to the public or themselves. Animal control shall have the authority to inspect and to close down public exhibits of animals including those which are part of fairs, carnivals, festivals, fund raising events, petting zoos and any other activity or function carried out in the town if it is determined that animals are being cruelly treated or run the risk of causing injury to the public or themselves.

(7) Poisoning, or exposing a domestic animal to any known poisonous substance or mixing a poisonous substance with food, so that it will likely be eaten by an animal. This does not include attempts or acts of persons to lawfully rid their own property of mice or rats or other vermin, nor does it include other acts permitted by the North Carolina wildlife department.

(8) Allowing a collar, rope or chain to become embedded in or cause injury to an animal's neck, or allowing a choke or pinch collar to be used as a primary collar on an unsupervised animal.

(9) Carrying or causing to be carried in or upon the open area of a truck or other motor vehicle any animal that is not secured, in an animal carrier or by a harness or other device, such that the animal cannot fall, jump, or be thrown from the vehicle.

(10) Unless otherwise permitted by law, giving away or offering any animal as a prize, premium or advertising device for or as an inducement to enter any contest, game or other competition involving skill or chance.

(11) Placing or confining an animal or allowing an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability or death. If an animal is discovered in a motor vehicle under such conditions, the procedures specified in 6-134(d) should be followed.

(12) Chaining or tethering (collectively, "tethering") an animal to a stationary object without a responsible person remaining outside with the animal while it is tethered. When tethering is allowed, the following are also prohibited:

a. Using a length or weight of a chain or tether that is not appropriate for the size, weight and age of the animal. A chain or tether should not be less than ten feet long. Using a chain or tether that exceeds ten percent of the animal's body weight shall be deemed not appropriate and potentially harmful.

(b) *Exceptions.* Nothing in this section shall be deemed to prohibit the humane transportation of horses, cattle, sheep, poultry or other livestock in trailers or other vehicles designed, constructed, and adequate for the size and number of animals being transported. Nothing in this section shall be construed to prohibit the animal control unit or veterinarians from euthanizing dangerous, unwanted, injured or diseased animals in a humane manner; nor to prohibit slaughterhouses or medical facilities from the proper, humane and lawful carrying out of their activities or duties. Nothing in this section shall be construed to regulate the standards of care for farm animals, as defined in G.S. 160A-203.1.

(c) *Inspections.* Animal control officers shall have the authority to conduct inspections of pet shops, kennels, dealers, or breeders, to the extent not preempted by state law, in order to determine if there is any abuse of animals. Pet shops, kennels, dealers, and breeders are subject to the state laws concerning rabies control abuse of animals shall include any act described in this section or any other act which is detrimental to the well-being of the animal. It shall be unlawful for any owner or employee of any pet shop or kennel or any dealers or breeders to violate this section.
(Code 1982, § 4-16; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2012-Code-02, 4-19-2012; Ord. No. 2016-Code-01, 2-25-2016)

State law reference—Cruelty to animals, G.S. 14-360.

Sec. 6-68. Notification of injury to animal.

All persons who injure or kill a domestic animal by running over, into or otherwise coming into contact with such animal with an automobile, motorcycle, bicycle or other vehicle shall notify the owner of the animal immediately. If the owner is unknown or cannot be located, the person who injured or killed the animal shall immediately notify animal control or the police department by giving their name and address, a description of the animal and the location of the incident.
(Code 1982, § 4-17; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-69. Animal bite; notification.

(a) *Bites unlawful.* It shall be unlawful for an animal to bite a human being who does not ordinarily reside on the premises of the animal unless the animal has been subject to provocation, or unless the victim has been trespassing.

(b) *Reporting bite.* It shall be unlawful for a person to fail to report to animal control as soon as possible that an animal has bitten a person. It shall be unlawful for any person to fail to inform the animal control unit the location to which an animal that has bitten a human being has been taken if the owner has given the animal away, or caused in any way the animal to be taken from the owner's premises.

(c) *Confinement.* Any dog or cat that bites a person or that shows symptoms of rabies shall be confined immediately and quarantined, at the direction of the animal control unit, for a period of ten days, and shall not be released from such quarantine except by written permission from the animal control unit. Dogs and cats quarantined under this section shall be confined in a veterinary hospital, licensed boarding kennel or county animal shelter, at the expense of the owner, provided, however, that if an animal control officer determines that the owner of an animal which must be quarantined has adequate confinement facilities upon his own premises, the animal control officer may authorize the animal to be confined on such premises. In order to qualify for this "own premises" quarantine, the animal must be constantly confined in a secure enclosure and the animal must be currently

vaccinated against rabies. If the animal is confined on the owner's premises, the animal control officer shall visit the premises for inspection purposes at times determined by the officer, but no less than once in the middle of the confinement and once at the end of the confinement.

(d) *Failure to confine.* If the owner fails or refuses to confine the animal as required by this section, the chief may order the seizure of the animal and its confinement for ten days at the expense of the owner. If the animal is unclaimed after the ten-day confinement, the chief may dispose of the animal.

(e) *Release from quarantine.* If rabies does not develop within ten days after the commencement of quarantine under this section, the animal may be released from quarantine, with the written permission of animal control.

(f) *Strays.* In the case of stray dogs or cats whose ownership is not known, the dog or cat may be euthanized and the head examined for rabies or kept for the supervised quarantine period required by this section at the animal control shelter.
(Code 1982, § 4-18; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2019-Code-02, 9-12-2019)

State law reference—Animal bites, G.S. 130A-196 et seq.

Sec. 6-70. Dangerous dogs.

(a) "Dangerous dog" means

(1) a dog owned or harbored primarily or in part for the purpose of dogfighting;

(2) a dog trained for dogfighting;

(3) a dog that has killed a person;

(4) a dog that has inflicted a severe injury on a person;

(5) a dog that has killed a domestic animal or inflicted a severe injury on a domestic animal, when the dog was not on the owner's real property; or

(6) a dog that has approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

This definition of "dangerous dog" shall not apply to a dog being used by a law enforcement officer to carry out the law enforcement officer's official duties; a dog being used in a lawful hunt; a dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog; or a dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(b) *Determination of dangerous dog; appeal.* The chief shall determine whether a dog is a dangerous dog. If the chief determines that a dog is a dangerous dog, the chief shall notify the owner in writing, giving the reasons for the determination. The owner may appeal the determination by filing written objections with the Town Manager's office, with a copy to the chief, within five business days after receipt of the notification. The appeal shall be heard by a Board appointed by the Town Manager, Deputy Town Manager, or designee, consisting of two town employees who are not employees of the Police Department. The Board shall schedule a hearing within ten business days of the filing of the written objections. The Board shall render a decision within three business days of the hearing. The decision shall be delivered by personal delivery, electronic mail, or first class mail mailed to the person requesting the appeal, with a copy to the chief. Once the time for filing an appeal has expired, or after any appeal has been finally adjudicated in favor of the chief's determination, the dog shall be deemed a dangerous dog for purposes of this ordinance.

(c) *Confinement and restraint.* The owner of a dangerous dog shall comply with the following provisions:

(1) When the dog is on the property of the owner, the dog shall be

a. confined indoors or outdoors in a securely enclosed and locked pen or in another structure designed to restrain the dog. An electronic enclosure is not sufficient to comply with this requirement; or

b. under restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint.

In addition, the owner must comply with any specific written instructions of the chief as well as Section 6-67 of this ordinance.

(2) When the dog is off the property of the owner it must be muzzled and under restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint.

(3) The owner shall notify the animal control unit immediately if the dog escapes or is otherwise freed from the secure enclosure or other restraint.

(d) *Transfer of ownership.* The owner of a dangerous dog shall comply with the requirements of G.S. 67-4.2 concerning transfer of ownership.

(e) *Sanctions, fines, penalties, and remedies.* In addition to criminal penalties provided by state law and civil penalties set forth in section 6-132(b)(1), any person who violates this section shall be subject to the following sanctions and remedies:

(1) If a dangerous dog is found at large it shall be seized and impounded. Animal control is authorized to go upon private property to seize the dangerous dog. If attempts to seize the dangerous dog are unsuccessful, animal control may tranquilize or humanely destroy the animal, without prior notice to the owner, upon authorization of the chief. The animal control officer shall thereafter make a good faith attempt to notify the owner of the incident.

(2) If the dangerous dog has caused injury to a person or another animal while at large and not confined within a secure enclosure, the chief, in addition to seizing the dog, may issue to the owner a notice of intent to destroy the dog. The owner may appeal this intended action by filing a written request for appeal with the town manager as specified in section 6-139.

(3) If an inspection of the premises where a dangerous dog is confined reveals that the owner has not complied with the requirements for confining a dangerous dog, animal control shall issue a $100.00 civil penalty in accordance with section 6-132(b)(1) and may impound the dog at the animal shelter.

(4) If the dangerous dog is not redeemed within five business days, or if the owner does not request an appeal within the time limit provided, the dog shall be deemed abandoned and shall be disposed of in accordance with this chapter.

(5) Nothing in this article shall prevent a private citizen from bringing an action against the owner of a dog, which has caused injury to the private citizen or his property, for damages or any other loss resulting from the dog being dangerous or potentially dangerous as defined by state law.

(Code 1982, § 4-19; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2016-Code-01, 2-25-2016)

State law reference—Civil penalties, G.S. 160A-175(c).

Sec. 6-71. Nuisance animals.

(a) *Prohibited generally; exceptions.* It shall be unlawful for any person to own, keep, possess, harbor or maintain an animal in such a manner as to unreasonably annoy humans, endanger the life or health of persons or other animals, or substantially interfere with the rights of citizens (other than their owners) to enjoyment of life or property, or otherwise constitute a public nuisance. By way of example and not of limitation, the following activities are hereby declared to be a public nuisance and are, therefore, unlawful:

(1) Getting into or turning over waste or garbage containers.

(2) Walking on or sleeping on automobiles of another.

(3) Damaging the real or personal property of anyone other than its owner.

(4) Repeatedly being or running at large.

(5) Being maintained in an unsanitary condition so as to be noxious or offensive to sight or smell.

(6) Not being confined to a building or secure enclosure while in estrus.

(7) Being vicious or chasing, snapping at, attacking, or otherwise molesting others including, pedestrians, bicyclists, motor vehicle passengers, or domestic animals.

(8) Allowing or permitting an animal or animals to make frequent or long continued sounds, including barking, whining, screeching, calling, howling or yowling in an excessive, continuous, habitual or untimely fashion, or to make other noise in such a manner and at such intervals so as to result in a serious annoyance or interference with the reasonable use and enjoyment of neighboring premises ("annoying sound"). Any such sound made by cats or dogs which is made for more than fifteen (15) minutes during any thirty (30) minute period shall be deemed to be an annoying sound. The normal clucking of chickens, kept in accordance with provisions of the Land Development Ordinance, shall not constitute an annoying sound. Any person owning, using or possessing premises affected by an annoying sound ("person annoyed by sounds") shall follow the procedures specified in subsection f. below.

(9) Being housed or restrained less than five feet from a public street, road or sidewalk such that the animal, without provocation, molests, attacks or otherwise interferes with the freedom of movement of persons in a public right of way, or the location of the animal poses a threat to the general safety, health and welfare of the general public.

(10) By virtue of number or type, being offensive or dangerous to the public health, safety, or welfare.

(11) Being diseased or dangerous to the health of the public.

(12) Being kept in such a manner as to attract excessive insects, pests, rodents, raccoons, snakes, or other wild animals.

(b) *Complaint and notice.* Except as to (a)(8) above, upon their own initiative or upon receipt of a detailed written and signed complaint being made to the animal control unit by any of the town residents that any person is maintaining a nuisance animal, the animal control unit may cause the owner of the animal or animals in question to be notified that a complaint has been received and may cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating animal control officer.

(c) *Abatement.* If the written findings of the investigating animal control officer indicate that the complaint is justified, then the chief or designee shall cause the owner or keeper of the animal or animals in question to be so notified in writing, served by personal delivery or by certified mail, return receipt requested, and ordered to abate such nuisance within a reasonable time not to exceed seven days after notification, and may issue a citation for the violation. The chief may specify the particular abatement measures that must be taken, which measures may include, but are not limited to, a requirement that the animal be penned, or that a secure enclosure be erected or improved. In the event the owner of the animal is unknown and cannot be ascertained, the notice and order, along with a general description of the animal, shall be published in a local newspaper.

(d) *Impoundment upon failure to abate.* If any person actually or constructively receiving notice in the manner herein described shall fail or refuse to abate the nuisance upon order of the chief within the specified time, the chief may cause the animal or animals in question to be seized and impounded in accordance with the provisions of section 6-134.

(e) *Redemption; destruction.* If the owner shall so request in writing within five days of the impoundment, an animal that has been impounded may be redeemed upon the owner's execution of a written agreement to comply with the abatement order and payment of all sums due hereunder. If no such written request is made, or if such a request is made, but a written agreement to comply with the abatement order is not delivered to the chief within five days of the impoundment, then the animal(s) shall be deemed abandoned and disposed of in accordance with the provisions of section 6-137.

(f) *Annoying sounds.* A person annoyed by sounds shall follow the procedures specified below.

(i) Upon receipt of a detailed written and signed complaint by a person annoyed by sounds, the animal control unit shall provide written notice to the owner or possessor of the premises on which the animal(s) making annoying sounds is maintained ("animal owner") that a complaint has been received about the animal's (animals') annoying sounds. The notice shall detail the complaint and may make suggestions on ways to correct the situation.

(ii) Upon receipt of such notice of complaint, the animal owner shall cure the violation. If the violation is not cured, or if a second complaint is made to the animal control unit about the same animal(s) within any six (6) month period, the animal control unit shall cause the animal owner to be served by an order to abate the annoying sounds within a reasonable period of time, not to exceed seven (7) days ("Abatement Order"). Such notice shall be served by personal delivery or by certified mail, return receipt requested.

(iii) If the original complainant, or any other affected person notifies the animal control unit that the animal owner has failed or refuses to abate the annoying sounds as provided in the

Abatement Order, the animal control unit shall investigate and may issue a civil citation for the violation in the amount of two hundred dollars ($200.00). Such citation shall be collected in the manner set forth in section 6-132.

(iv) If the annoying sounds continue after issuance of the citation, the complainant should pursue the action by going to the magistrate and filing a summons against the animal owner. Nothing in this section shall prevent a private citizen from bringing an action at any time against an animal owner.

(Code 1982, § 4-21; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 06-020, 12-14-2006; Ord. No. 2012-Code-04, 8-23-2012)

Sec. 6-71a. Nuisance bees.

(a) *Prohibited generally; exceptions.* It shall be unlawful for any person to own, keep, possess, harbor or maintain bees or beehives in such a manner as to unreasonably annoy humans, endanger the life or health of persons or animals, or substantially interfere with the rights of citizens (other than their owners) to enjoyment of life or property, or otherwise constitute a public nuisance. By way of example and not of limitation, the following activities are hereby declared to be a public nuisance and are, therefore, unlawful:

(1) Multiple bees stinging, attacking, or otherwise molesting others including, pedestrians, bicyclists, motor vehicle passengers, or domestic animals;

(2) Hive placement and related bee movement such that the bees, without provocation, interfere with the freedom of movement of persons in a public right of way, or the location of the bees poses a threat to the general safety, health and welfare of the general public; or

(3) The keeping of overcrowded, diseased or abandoned hives.

(b) *Complaint and notice.* Upon their own initiative or upon receipt of a detailed written and signed complaint being made to the animal control unit by any of the town residents that any person is maintaining nuisance bees, the animal control unit may cause the owner of the bees in question to be notified that a complaint has been received, or take immediate action to abate the nuisance if deemed necessary.

(c) *Abatement.* If investigation of the investigating animal control officer indicates that the complaint is justified, but that action by town staff to immediately abate the nuisance is not deemed necessary, then the chief or designee shall cause the owner or keeper of the bees in question to be so notified and ordered to abate such nuisance and may issue a citation for the violation. However, if immediate abatement of the nuisance is deemed necessary, then the investigating animal control officer may cause the bees and/or hive in question to be seized and relocated, or if the nuisance bees and/or hive cannot be reasonably seized and relocated, the animal control officer may cause them to be destroyed in the field. In such instances, the owner of the bees shall be responsible for any costs incurred to effectuate the seizure, relocation, or destruction of the bees and/or hive.

(d) *Seizure and relocation upon failure to abate.* If any person actually or constructively receiving notice in the manner herein described shall fail or refuse to abate the nuisance upon order of the chief within the specified time, the chief may cause the domesticated bees and/or hive in question to be seized and relocated. In such instances, the owner of the bees shall be responsible for any costs incurred to effectuate the seizure and relocation of the bees and/or hive.

(e) *Notice to owner.* Upon seizing bees and/or their hive, the animal control officer shall cause a prompt and reasonable effort to be made to locate and notify the owner of the bees, if the owner is known or reasonably ascertainable. A notice of seizure shall be left with the owner or affixed to the premises of the owner, if the owner is known or reasonably ascertainable.

(f) *Redemption; destruction.* If the owner shall so request in writing within five days of the seizure of the bees and/or hive, the bees and/or hive that have been seized and relocated may be redeemed upon the owner's execution of a written agreement to comply with the abatement order and payment of all sums due hereunder. If no such written request is made, or if such a request is made, but a written agreement to comply with the abatement order is not delivered to the chief within five days of the seizure, then the bees and hive shall be deemed abandoned and shall be destroyed in a humane manner, or become the property of a member of a legitimate beekeeping association provided that bees are maintained in compliance with the provisions of this chapter and provisions related to beekeeping found in the Town of Cary Land Development Ordinance.

(g) *Revocation of Accessory Use Permit.* In instances where the owner fails or refuses to abate the nuisance within the specified time, and has not appealed pursuant to section 6-139, the Planning Director may revoke the owner's Accessory Use Permit, and the owner shall be unable to reapply for another Accessory Use Permit for beekeeping for a period of twelve (12) months.
(Ord. No. 2012-Code-06, 10-11-2012)

Sec. 6-72. Lazy Daze, Spring Daze, July 4th Celebration at Regency Park and other designated special events; animals prohibited.

(a) *Applicability.* Lazy Daze Arts and Crafts Festival, Spring Daze and July 4th Celebration at Regency Park are town-sponsored festivals attracting extraordinarily large numbers of spectators confined to a limited area for festivals that are of greater duration than other community events. The presence of animals at these festivals poses some concern for both spectators and the animals. In addition to those festivals listed, the presence of animals at other events may pose similar concerns, and sponsors of other special events may request the town manager or his authorized designee in writing to apply the provisions of this section to such special events. The town manager, or his designee, is authorized to approve such requests if he or she determines that the number of spectators, the size of the area on which the special event takes place, or the threat to the public safety or health would warrant the application of this section.

(b) *Unlawful to have animal at Lazy Daze, Spring Daze and July 4th Celebration at Regency Park.* It shall be unlawful for any person owning or having possession, charge, custody, or control of any animal as defined in section 6-3, to take that animal, whether or not under restraint, into, or allow the animal to enter, the boundaries of Lazy Daze, Spring Daze or the July 4th Celebration at Regency Park or any other special event to which these provisions have been made to apply. The boundaries and the interior of Lazy Daze, Spring Daze and July 4th Celebration at Regency Park and any other

special event to which these provisions apply, shall consist of any property that is part of the festival or other special event and shall include any public street, sidewalk, or other publicly owned area that is within or constitutes the boundary of the event.

(c) *Failure to remove animal.* It shall be unlawful for any person with an animal on or within the boundaries of Lazy Daze, Spring Daze and July 4th Celebration at Regency Park or any special event to which these provisions have been made to apply to fail to obey the command of a law enforcement officer or animal control officer to remove such animal from on or within the boundary of Lazy Daze, Spring Daze and July 4th Celebration at Regency Park or the special event.

(d) *Exceptions.* This section shall not apply to those animals that are part of an authorized exhibit. Town police officers and animal control officers shall have the authority to specify the conditions for having such animals for the protection of the public and for the well-being of the animals. This section shall not apply to guide dogs or hearing-aid dogs in the company of blind or deaf persons.
(Code 1982, § 4-21; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-73. Rabies inoculation tags.

Dogs shall wear rabies vaccination tags at all times, as required by G.S. 130A-190(a). Cats and ferrets are not required to wear the rabies inoculation tags, but the owner of a cat or ferret shall maintain the tag or the rabies vaccination certificate as written evidence to prove the cat or ferret has a current rabies inoculation and shall produce such tag or certificate as requested by animal control and as otherwise required by law.
(Code 1982, § 4-22; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2010-Code-08, 10-14-2010)

State law reference—Authority to exempt cats from wearing tag, G.S. 130A-190.

Secs. 6-74—6-104. Reserved.

ARTICLE IV. RESERVED

Secs. 6-105—6-131. Reserved.

ARTICLE V. ENFORCEMENT, SEIZURE AND IMPOUNDMENT

Sec. 6-132. Enforcement.

(a) *Purpose.* The town council's determination is that it is important to enforce vigorously and effectively this chapter's provisions. The council makes the following findings to accomplish the objective of vigorous and effective enforcement of these provisions that:

(1) A current rabies inoculation tag is vital for public health, for the ability of the animal control unit to carry out its functions, for the protection of the owner and for the protection of the animal and, therefore, must be complied with. The owner of an animal, particularly a dog, has a very serious obligation of ownership and a duty to the citizens of Cary to comply with town rabies inoculation requirements.

(2) The presence of a domestic animal at large often creates substantial anxieties and concerns for people for safety and free movement; and, therefore, the owner has an obligation to the citizens of Cary to see that their domestic animals do not go at large.

(3) The possibility of an animal bite is a serious anxiety for persons, neighborhoods and areas in Cary; and, therefore, owners have an obligation to prevent the creation of that apprehension and concern.

(4) An animal owner has a particular responsibility for being conscious of and sensitive to any possible dangers for children under the age of seven years who, at that age, are unable to fully appreciate the possible danger presented by an animal and an animal's reaction to a child under the age of seven.

(5) The animal control unit must have ample authority to impose preventive measures, seize and impound animals, and, if necessary, terminate ownership rights.

(6) Escalating fees and other sanctions are measures that have been adopted to protect the citizens of Cary and to declare that the ownership of animals entails publicly related responsibilities.

(b) *Methods of town.* When there is a violation of this chapter, the chief may take one or more of the following courses of actions set forth in this section. The chief may cause a complaint to be filed or any action to be brought on behalf of the town and may collect any amount for outstanding costs, fees or penalties assessed or imposed pursuant to this chapter. Any such action shall be cumulative and shall not be deemed as a bar to or a waiver of the right to institute any other civil or criminal proceeding for a violation of this chapter.

(1) *Civil penalties.*

a. Violations of section 6-73 (failure to have rabies tag): Penalty: $50.00 for failure to have current inoculation.

b. Violation of section 6-65 (domestic animals at large) or 6-67(a)(12). The issuance of a citation for a violation of Code section 6-65 (domestic animals at large) or 6-67(a)(12), like other ordinances concerning animals, is directed toward and against the owner of the animal. The purpose of the issuance of a citation is to affect the conduct of the owner of an animal by seeking to have an owner responsibly maintain restraint and confinement of the animal. To encourage responsible conduct, an owner shall be subject to escalating penalties for each violation of this section by the owner, whether the animal is the same animal, a different animal or various animals belonging to the owner. Each violation of Code section 6-65 or 6-67(a)(12) shall subject the owner to an increased citation penalty:

Offense	*Penalty*
1st	$ 20.00 fine
2nd	$ 50.00 fine
3rd	$ 75.00 fine
4th	$ 100.00 fine
5th	$ 250.00 fine and seizure of the animal

c. *Violation of section 6-69 (animal bite) or 6-70 (dangerous dog).* Penalty: $100.00.

d. *Other violations:* All other violations shall be subject to a penalty of $20.00 for the first violation and $50.00 for each subsequent violation.

(2) *Criminal misdemeanor.* The violator may be charged with a misdemeanor. Criminal action may be initiated by any police officer or animal control officer;

(3) *Injunction.* The town may apply to the appropriate court for injunctive relief, orders of abatement and/or orders of custody which could require that a violator correct any unlawful condition relating to this chapter existing on his or her property. The chief may request the initiation of any such actions.

(4) *Seizure/impoundment.* In addition to criminal or civil penalties, for certain violations of this chapter, or if conditions pose an immediate threat to the health or safety of the animal or the public, animal control is authorized to seize and impound an animal.

(5) *Exception.* Nothing in this chapter shall be construed to prevent law enforcement officers of any kind from enforcing any of the provisions of this chapter or from exercising their authority as law enforcement officers.

(6) *Liability for payment.* Surrender of an animal or failure to redeem an animal shall not relieve the owner of responsibility for payment of any outstanding civil penalty that was assessed prior to the animal being surrendered or as a result of the animal being impounded. If payment of a civil penalty is not received within 15 days of issuance of the citation, the chief may initiate legal proceedings to recover the amount of the penalty.

(c) *Private enforcement methods.* Nothing in this chapter shall prevent a private citizen from bringing an action to abate a nuisance or from bringing an action for damage, loss or injury to the private citizen or his or her property resulting from an animal being a nuisance.

(Code 1982, § 4-28; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2012-Code-02, 4-19-2012; Ord. No. 2012-Code-04, 8-23-2012; Ord. No. 2016-Code-01, 2-25-2016; Ord. No. 2019-Code-02, 9-12-2019)

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

Sec. 6-133. Citations.

(a) *Citations.* Animal control officers are empowered to issue citations to any person if there is reasonable cause to believe that the person has violated any provision of this chapter. These citations may be delivered in person to the violator; or, if the violator cannot be readily found, the citation may be mailed as provided in section 2-1. The citation shall direct the violator to pay the citation within 15 days of the date of the citation. The citation may be paid at the town finance office.

(b) *Notice of further actions.* If the violator does not pay the citation within 15 days of its issuance, a notice thereof will be mailed to the violator. This notice shall inform the violator that further legal action may be filed if the citation and delinquency charges are not paid within 15 days from the date of the delinquency notice.

(c) *In duplicate.* All citation forms shall be serially numbered in duplicate. Records of all citations shall be maintained so that all such forms shall be capable of being accounted for. The town finance director, or designee, shall periodically investigate the records of the unit for the purpose of determining the disposition of the citations and shall report the results of such investigation to the town manager. For the purpose of this investigation, the finance director shall have access to the necessary records of the unit.
(Code 1982, § 4-29; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 6-134. Seizure and impoundment.

(a) *Seizure.* Domestic animals may be seized and impounded when found at large, or as otherwise provided in this chapter. The unit, or some other designated person, upon receiving such animal shall make a complete registry, entering the breed, color and sex of such animal.

(b) *Notice to owner.* Upon seizing an animal a notice of seizure shall be left with the owner or affixed to the premises. If an animal is not from a particular premises but has an identification tag, the animal control officer shall cause a prompt and reasonable effort to be made to locate and notify the animal's owner.

(c) *Failure to redeem.* If the owner fails to redeem the animal within the time limit provided in this chapter, or fails to timely request an appeal, or fails to timely appeal the manager's decision, or if the animal is seized the animal shall be deemed abandoned and disposed of as provided in section 6-137.

(d) *Animal unattended in motor vehicle.* In the case of an animal discovered unattended and confined in a motor vehicle in violation of section 6-67(11), the following shall apply: after making a reasonable effort to find the driver of a vehicle in which an animal is confined, an animal control officer, in the presence of a police officer, may use the least intrusive means to break and enter the vehicle if necessary to remove the animal where reasonable cause exists to believe that the animal is in the vehicle in violation of this chapter. The animal control officer removing the animal shall then impound it and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed. The animal control officer may also issue a citation for violation of section 6-67(a)(11), animal abuse.
(Code 1982, § 4-30; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-135. Periods of impoundment.

Domestic animals that are seized shall be impounded for no less than five days in a humane manner.
(Code 1982, § 4-31; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-136. Redemption of impounded animal.

(a) *Redemption within five days.* The owner of an animal impounded under this chapter may redeem such animal within five consecutive days after notice of impoundment is given or posted as required by section 6-134, except as provided in this chapter, upon the payment of all redemption fees, the furnishing of proof of ownership, and upon complying with any other conditions that may be required herein.

(b) *Redemption fees.* Redemption fees provided in this section shall include an impoundment fee, any veterinarian's fees, and the daily fee for the shelter and feeding. The impoundment fee and daily fee may be set by the animal control shelter, and may be revised from time to time. The redemption fee for an animal which has once previously been impounded within the previous six months shall be double the impoundment fee that would otherwise be due. No owner of an impounded animal will be allowed to avoid the payment of any fee imposed under the provisions of this chapter by attempting to adopt the animal instead of redeeming it.

(c) *Vaccination.* Unless proof of a current rabies vaccination can be furnished, every person who either adopts or redeems a dog or cat at the animal shelter will be issued a proof-of-rabies vaccination card at the time of redemption or adoption. This card will be stamped with the date stating the date by which the animal must be given a rabies vaccination by a provider of the owner's choice. The time limit for dogs and cats aged four months and older will be 72 hours, with Sundays and holidays excluded. For puppies and kittens aged under four months, the limit will vary according to their age. The proof-of-rabies vaccination card will be completed and returned to the animal shelter by the veterinarian. If this card is not returned to the animal control shelter within two weeks of the time limit specified on the card, an animal control officer will be dispatched to retrieve the animal. Payment for rabies vaccination provided for in this section shall be the responsibility of the person redeeming or adopting the animal.
(Code 1982, § 4-32; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2019-Code-02, 9-12-2019)

Sec. 6-137. Disposition of unredeemed animals.

(a) *Deemed abandoned.* At the end of the minimum time period indicated in section 6-135, unclaimed animals shall be deemed abandoned and shall be disposed of in a humane manner. The animal may be destroyed in a humane manner or the animal may become the property of the animal shelter or may be offered for adoption to a legitimate rescue group or may be offered for adoption to any responsible adult who complies with the provisions of this chapter. Such animal may be adopted or purchased by the first person who pays the adoption or purchase fee. No rabies vaccination fee will be required for animals sold to dealers licensed pursuant to the United States Department of Agriculture's Animal Welfare Act.

(b) *Spaying/neutering.* Animal control may recommend that all adopted female dogs and cats released from the animal shelter be spayed and that all adopted male dogs and cats released from the animal shelter be neutered.
(Code 1982, § 4-33; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2008-Code-04, 10-16-2008)

Sec. 6-138. Summary destruction of animals for humane reasons; summary destruction of animals that cannot be seized by reasonable means.

When, in the judgment of the person in charge of impoundment facility, it is determined that any impounded animal should be destroyed for humane reasons, or to protect the public from imminent danger to persons or property, such animal may be destroyed without regard to any time limitations otherwise established herein. Notwithstanding any other provision of this chapter, an animal that cannot be reasonably seized, retrieved, humanely trapped, or tranquilized may be humanely destroyed in the field upon the authorization of the chief. Provided, a vicious animal, an animal attacking a human being or pet, or a dog determined to be a dangerous dog under section 6-70, may be summarily destroyed if, in the opinion of animal control, such destruction is necessary for the protection of life or property or for the public health and safety.
(Code 1982, § 4-34; Ord. No. 01-022, § 1, 11-8-2001)

Sec. 6-139. Appeals.

(a) *Appeals.* Any person, owner, or possessor affected by any ruling or action taken by animal control with regards to any of the following may request a review of such action by filing a request for appeal with the town manager:

(1) Seizing, relocating and impounding an animal or bees, unless said seizure was authorized by a judicial official.

(2) [reserved]

(3) Issuing a notice of intent to destroy.

Appeals pertaining to section 6-70 (dangerous dog) shall be made and conducted according to the provisions of that section.

(b) *Method.* Unless otherwise provided by law, a request for appeal must be made in writing and filed with the town manager, with a copy to the chief, within five days of the action or decision complained of and must state with particularity the grounds for the appeal. An appeal hearing shall be scheduled and conducted by the manager, or designee.

(c) *Appeal bond.* All persons requesting an appeal pursuant to this chapter shall post with animal control an appeal bond of ten per cent of the amount owed for redemption and boarding fees and civil penalties arising out of the conduct which is the subject of the appeal. However, in no event shall the appeal bond required pursuant to this section be less than $25.00 nor more than $250.00.

(d) *Waiver of bond.* The appeal bond shall be waived for any person determined to be indigent after filing an affidavit of indigence. The affidavit must state that the citizen is without funds to post an appeal bond in the amount required by the ordinance.

(e) *Disposition of bond.* The appeal bond shall be held pending determination of the appeal by the manager. The appeal bond shall be fully refunded if the manager overturns the action or decision complained of. If the manager upholds or affirms the action or decision of animal control, the appeal bond shall be paid to the animal shelter toward boarding and redemption fees for the subject animal. If no redemption or boarding fees are owed, the appeal bond shall be paid to the animal control unit.

(f) *Responsible for fees and penalties.* The owner shall remain responsible for any outstanding boarding and redemption fees or civil penalties that are not satisfied by the appeal bond.

(g) *Decision.* The manager shall render a decision within three business days of the hearing. The decision shall be delivered by personal delivery, electronic mail, or first class mail to the person requesting the appeal, with a copy to animal control.

(h) *Decision upholding action.* If the decision is against the person requesting the appeal, animal control shall implement the sanction(s) upheld by the manager. The person requesting the appeal may appeal the decision of the town manager to the Wake County Superior Court within ten days of the manager's decision. Any sanctions or penalties imposed shall be enforceable during the pendency of any appeal.

(i) *Decision overturning action.* If the decision is against animal control, efforts to implement the sanction(s) shall cease. A decision rendered by the manager applies only to the violation(s) and sanction(s) appealed and does not prevent the animal control unit from enforcing a subsequent violation of the same provision or any other provision of this chapter.
(Code 1982, § 4-35; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 2012-Code-02, 4-19-2012; Ord. No. 2012-Code-06, 10-11-2012; Ord. No. 2016-Code-01, 2-25-2016; Ord. No. 2019-Code-02, 9-12-2019)

Sec. 6-140. Exemptions.

This chapter shall not apply to the lawful taking of animals under the jurisdiction and regulation of the wildlife resources commission, lawful activities of agencies conducting or sponsoring biomedical research or training, lawful activities of any Law Enforcement Canine Team in the performance of their duties, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting livestock, poultry or humans.
(Code 1982, § 4-36; Ord. No. 01-022, § 1, 11-8-2001; Ord. No. 05-010, 7-28-2005)

Sec. 6-141. Notice.

Unless specifically provided otherwise herein, service of notices required by this chapter shall be as provided in section 2-1.
(Code 1982, § 4-37; Ord. No. 01-022, § 1, 11-8-2001)

Chapter 7

RESERVED

Chapter 8

BUILDINGS AND BUILDING REGULATIONS

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ARTICLE I. IN GENERAL

Sec. 8-1. Definitions.

As used in the codes adopted in this chapter, The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official shall mean the director of the department of inspections and permits.

Department shall mean the department of inspections and permits.

Director shall mean the director of the department of inspections and permits.
(Code 1976, § 15-2(1—3); Code 1982, § 5-1)

Secs. 8-2—8-20. Reserved.

ARTICLE II. BUILDING NUMBERS

Sec. 8-21. Required.

(a) Every owner of improved property shall furnish and at all times display in a conspicuous place on the street side of said property the correct property number as determined by the town. The numerals used to display this number shall be at least three inches high for residential properties and at least six inches high for commercial properties and shall be readily visible and legible from the street, and shall be of a color to contrast with their background, except that owners of multifamily property involving more than one primary building shall display property numbers at least six inches high for the shell building and unit or suite numbers at least three inches high.

(b) All primary buildings on property not fronting on a public street will display in a conspicuous place numbers or letters identifying said buildings. The characters used for such identification shall be at least six inches high, shall be readily visible and legible from the road, driveway, or parking lot that provides vehicular access to said buildings, and shall be of a color to contrast with their background.
(Code 1976, § 14-9; Code 1982, § 5-6; Ord. No. 85-2, § 1, 1-10-1985; Ord. No. 94-005, § 1, 4-14-1994)

Sec. 8-22. Defacing numbers.

No person shall alter, deface or take down any number placed on any property in accordance with this article, except for repair or replacement of such number.
(Code 1976, § 14-9; Code 1982, § 5-17; Ord. No. 94-005, § 1, 4-14-1994)

Sec. 8-23. Future buildings.

All residence and business buildings shall be assigned a number in accordance with the property-numbering policy adopted by the town council.
(Code 1976, § 14-8; Code 1982, § 5-18; Ord. No. 94-005, § 1, 4-14-1994)

Sec. 8-24. Numbering system.

Property shall be numbered in accordance with the policy adopted by the town council.
(Code 1976, § 14-6; Code 1982, § 5-9; Ord. No. 94-005, § 1, 4-14-1994)

Secs. 8-25—8-51. Reserved.

ARTICLE III. STATE BUILDING CODE*

Sec. 8-52. State building code adopted.

The North Carolina Building Code as now or hereafter amended is adopted by reference.
(Code 1976, § 15-9; Code 1982, § 5-32)

Sec. 8-53. Fire limits.

The primary fire limits shall be identified as centering on Chatham Street with its boundaries defined by Walker Street to the east, the CSX Railroad right-of-way to the north, Harrison Avenue to the west, and Waldo Street to the south with its center line extending beyond Academy Street and intersecting Harrison Avenue at a point approximately 225 feet south of the Chatham Street center line.
(Code 1976, § 8-11; Code 1982, § 5-35)

State law reference—Fire limits, G.S. 160A-435 et seq.

Sec. 8-54. Building moving.

(a) No person shall move any house, building or structure upon or across the public streets or sidewalks without the written consent of the town manager and the deposit of a good and sufficient bond in an amount considered by the town manager to be sufficient to cover any damage occurring to public or private property.

(b) No person shall move or assist in moving from without into the fire district, or moving from one place to another within the same, any building of a type of construction other than those types permitted to be constructed within fire limits by the general statutes and the state building code.
(Code 1976, §§ 8-12, 14-50; Code 1982, § 5-36)

Sec. 8-55. Permit.

No permit shall be issued to any person who has failed after notice to remedy defective work, or has failed to pay a civil penalty assessed pursuant to this Code which is due and for which no appeal is pending for work performed under a permit issued pursuant to this chapter.
(Ord. No. 2007-18, 12-13-2007)

Secs. 8-56—8-81. Reserved.

***State law references—**Building code council and building code, G.S. 143-136 et seq.; building inspection by municipalities, G.S. 160A-411 et seq.; adoption of technical codes, G.S. 160A-76(b).

ARTICLE IV. UNSAFE STRUCTURES*

Sec. 8-82. Finding; intent.

It is hereby found that there exist within the town abandoned structures which the town council finds to be hazardous to the health, safety and welfare of the residents of the town due to the

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***State law references—**Defective buildings, G.S. 160A-425 et seq.; minimum housing standards, G.S. 160A-441 et seq.

attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-441, it is the intent of this article to provide for the repair, closing or demolition and removal of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition and removal of housing unfit for human habitation.
(Code 1982, § 5-72; Ord. No. 96-012, 11-14-1996)

Sec. 8-83. Director of inspections and permits division.

This article shall be enforced by the director and by his or her designee(s). The director is hereby designated and appointed to enforce the provisions of this article and to exercise the duties and powers prescribed herein, and in the minimum housing standards, including:

(1) Investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this article;

(2) Enter upon premises for the purpose of making inspections;

(3) Administer oaths and affirmations, examine witnesses and receive evidence;

(4) Designate such other officers, agents and employees of the town as the inspector deems necessary to carry out the provisions of this article;

(5) Take such action pursuant to this article as may be necessary to provide for the repair, closing or demolition of such structures;

(6) Keep an accurate record of the results of inspections made under this article and all enforcement proceedings begun pursuant to the provisions of this article; and

(7) Perform such other duties as may be prescribed herein or in article V, or assigned to the inspector by the town council.

(Code 1982, § 5-73; Ord. No. 96-012, 11-14-1996)

State law reference—Mandatory provisions, G.S. 160A-443(1).

Sec. 8-84. Standards for enforcement.

(a) Every abandoned structure within the town shall be deemed in violation of this article whenever such structure constitutes a hazard to the health, safety or welfare of the town citizens as a result of:

(1) The attraction of insects or rodents;

(2) Conditions creating a fire hazard;

(3) Dangerous conditions constituting a threat to children; or

(4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.

(b) In making the preliminary determination of whether or not an abandoned structure is in violation of this article, the director may, by way of illustration and not limitation, consider the presence or absence of the following conditions:

(1) Holes or cracks in the structure's floors, walls, ceilings or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects.

(2) The collection of garbage or rubbish in or near the structure which might attract rodents and insects, or become breeding places for rodents and insects.

(3) Violations of the state building code, the state electrical code, or the fire codes which constitute a fire hazard in such structure.

(4) The collection of garbage, rubbish or combustible materials which constitute a fire hazard in such structure.

(5) The use of such structure or nearby grounds or facilities by children as a play area.

(6) Violations of the state building code which might result in danger to children using the structure or nearby grounds or facilities as a play area.

(7) Repeated use of such structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating.

(Code 1982, § 5-74; Ord. No. 96-012, 11-14-1996)

Sec. 8-85. Investigations; issuance of complaint; hearing; decision of inspector.

The same powers and duties, provisions, and procedures shall apply for the investigation, issuance of orders, appeal procedures, and enforcement of orders pertaining to unsafe abandoned structures as apply to the enforcement of the town's minimum housing standards, article V, inclusive, except as follows: Wherever the term "housing" appears, the term "abandoned structure" shall be substituted therefor; wherever the phrase "unfit for human habitation" appears, the phrase "health, safety or welfare hazard" shall be substituted therefor.

(Code 1982, § 5-75; Ord. No. 96-012, 11-14-1996)

Sec. 8-86. Definitions.

(a) *Generally.* The following definitions to this article shall apply in addition to the applicable definitions contained in section 8-117:

Abandoned means deserted, or discontinuance of use.

Deteriorated means any structure which constitutes a hazard to the health, safety or welfare of the town and can be repaired, altered or improved to comply with this article at a cost not in excess of 50 percent of its value, as determined by finding of the inspector.

Dilapidated means any structure which constitutes a hazard to the health, safety or welfare of the town citizens and cannot be repaired, altered or improved to comply with this article except at a cost in excess of 50 percent of its value, as determined by finding of the inspector.

Structure means that which is built or constructed.

(b) *Words having certain meanings.* Whenever the word "abandoned structure" is used herein, it shall be construed as though followed by the words "or any part thereof."
(Code 1982, § 5-76; Ord. No. 96-012, 11-14-1996)

State law reference—Similar provisions, G.S. 160A-445.

Secs. 8-87—8-115. Reserved.

ARTICLE V. MINIMUM HOUSING STANDARDS

Sec. 8-116. Finding; purpose.

(a) Pursuant to G.S. 160A-441, it is hereby declared that there exists in the town, housing which is unfit for human habitation due to:

(1) Dilapidation;

(2) Defects increasing the hazards of fire, accidents and other calamities;

(3) Lack of ventilation, light and sanitary facilities; or

(4) Other conditions rendering such dwellings unsafe or unsanitary for the occupants thereof or of neighboring dwellings or for other residents of the town.

(b) It is further declared that the existence of such unfit housing is dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of, the residents of the town.

(c) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. Ch. 160A, Art. 19, Pt. 6 (G.S. 160A-441 et seq.), it is the purpose of this article to establish and enforce minimum standards of fitness for the existence and initial and continued occupancy of all buildings used for human habitation, and for the protection of occupants of neighboring housing and other residents of the town, as expressly authorized by G.S. 160A-444.
(Code 1982, § 5-200; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010)

Sec. 8-117. Definitions.

(a) *Generally.* The following definitions shall apply in the interpretation and enforcement of this article:

Accessory structure means any building or structure used or intended to be used in conjunction with housing but not used for habitation, whether attached to or detached from a primary structure, including, but not limited to, sheds, storage buildings, carports and garages, and any attached fence.

Basement means a portion of any housing, at least 40 percent of the habitable space of which is located below finished grade level, having direct access to light and air from windows located above grade.

Cellar means a portion of any housing which is located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

Deteriorated means housing which is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this article at a cost not in excess of 50 percent of its value, as determined by finding of the inspector. Repair at a cost not in excess of 50 percent of the value is hereby deemed reasonable pursuant to G.S. 160A-443(3).

Dilapidated means housing which is substandard or unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this article except at a cost in excess of 50 percent of its value, as determined by finding of the inspector.

Dwelling means any building or structure, or part thereof, used or occupied for human habitation or intended to be so used, and includes any accessory structures and appurtenances belonging thereto or usually enjoyed therewith. Notwithstanding the preceding, manufactured homes, as defined in G.S. 143-145(7), are designed and constructed pursuant to standards other than those governing structures having permanent foundations. Therefore, manufactured homes shall not be subject to all of the standards contained herein; however, any conditions in a manufactured home that render housing "unfit" under this section shall constitute a violation of this article, and any combination of substandard conditions which, in the judgment of the inspector, renders a manufactured home dangerous or injurious to the health, safety or morals of the occupants of the home, nearby housing or other residents of the town shall constitute a violation of this article. Additionally, the term "dwelling" does not include any manufactured home which is used solely for a seasonal vacation purpose.

Dwelling unit means any habitable room or group of habitable rooms used or intended for occupation as a single housekeeping unit, with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Egress means a clear and unobstructed way of departure from the interior of housing to the exterior at street or grade level.

Extermination means the control and elimination of insects, rodents or other pests by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping; or by any other recognized and legal pest elimination methods approved by the inspector.

Flue means an enclosed pipe, duct or passageway used only for the transmission of heat or the products of combustion.

Garbage means the organic waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room or *habitable space* means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers, communicating corridors, wall areas, storage spaces, and any area beneath a ceiling of less than four and one-half feet in height.

Housing means any residential building, dwelling, dwelling unit, multiple dwelling, apartment, boardinghouse or similar building or structure, or part thereof, together with the premises of such building, and other appurtenances thereto.

Impervious to water (as to floors) means a clean, smooth floor, without cracks or holes, made of terrazzo, ceramic, asphalt or rubber tile, smooth concrete, linoleum or other similar material, or made of wood, and, if made of wood, then with tightly fitting joints, covered with varnish, lacquer or other similar water-resistant coating.

Infestation means the presence of any insects, rodents or other pests within or around housing in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.

Inspector means the director of inspections and permits department and his or her designee(s). In addition to the powers and responsibilities granted in this article, the inspector shall have and may exercise the powers and responsibilities of "public officer" set forth in G.S. 160A-441 et seq.

Landings means any flat area around doorways, ramps, or stairs as required by the state residential building code and shall be at least three foot in depth with a minimum width no less than the door it serves.

Multiple dwelling means any housing containing more than two dwelling units.

Occupant means any person living, sleeping, cooking or eating in, or having actual possession of, housing.

Operator means any person who has charge, care or control of a building, or part thereof, in which housing is let.

Owner means any person who is the holder of title in fee simple to housing, and every mortgagee of record.

Party or parties in interest means all persons who have interest of record in housing, and any persons who are in possession thereof.

Person means any individual, corporation, limited liability company, firm, partnership, association, conservator, receiver, trustee, executor or other legal entity.

Plumbing means supplied fixtures, as defined herein, together with all connections to water, sewer or gas lines within the property lines of the premises, employed for use of water, sewer or gas utilities, including, but not limited to, gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), sewage disposal pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents and traps.

Porch means a covered area greater than 25 square feet with a roof at an entrance to housing.

Premises means a lot, plot or parcel of land, including the buildings or structures thereon, or any part thereof, except land occupied by streets, alleys or public thoroughfares.

Public authority means any housing authority or any officer or employee of any department or branch of the governments of the town, county, or the state relating to health, safety, law enforcement, fire or building regulations or other activities concerning housing in the town.

Remove and demolish means the demolition and removal of the entire building or structure, leaving the premises free and clear of any debris, any excavation properly filled in, and with no holes or pockets which may retain water.

Rubbish means combustible or noncombustible waste materials, except garbage, including, but not limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass or dust.

Structure means that which is built or constructed.

Substandard means any condition existing in any housing which does not meet the standards of fitness of this article as stated in Sections 8-119 through 8-126.

Unfit for human habitation or *unfit* means housing which is dangerous or injurious to the health, safety or morals of the occupants of the housing, the occupants of neighboring housing, or other residents of the town, as further described in Section 8-118(c).

Vacate and close means that housing shall be secured to prevent entry, including all outer doors firmly locked and basement, cellar and windows barred or boarded. It also means that such housing shall not again be used for human habitation until all violations are corrected and an inspection is conducted by the inspector to verify compliance with this article.

Value means the total value of any structure which is the subject of an order hereunder, as appraised for ad valorem tax purposes on the duly adopted and recorded tax rolls of the county on the date of the inspector's initial order pursuant to section 8-129(b) herein.

Ventilation means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

Weathertight means so constructed that the housing resists weather and excludes precipitation and prevents the infiltration of air.

(b) *Words having certain meanings.* Whenever the words "housing," "dwelling," "dwelling unit," and "premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."
(Code 1982, § 5-201; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-118. Fitness.

(a) All housing used as human habitation, or held out for use as human habitation, should comply with all of the minimum standards of fitness for human habitation set forth as sections 8-119 through 8-126, inclusive, of this article, and any housing which does not so comply is considered substandard.

(b) No person shall occupy as owner-occupant, or let to another for occupancy or use as a human habitation, any housing which is unfit for human habitation as provided below.

(c) The Town Council hereby finds that existence of any one of the following conditions renders housing unfit for human habitation:

(1) Interior walls or vertical studs which seriously list, lean or buckle to such an extent as to render the building unsafe;

(2) Supporting member or members which show 33 percent or more damage or deterioration, or nonsupporting, enclosing or outside wall or covering which shows 50 percent or more of damage or deterioration;

(3) Floors or roof which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;

(4) Such damage by fire, wind, water or other causes as to render the building unsafe or dangerous to the health, safety, or morals of the occupants or other people in the town;

(5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or morals of the occupants or other people in the town;

(6) The means of exit or escape in case of fire, accident or other calamity is blocked, structurally unsafe, or otherwise insufficient;

(7) Defects significantly increasing hazards of fire, accident or other calamity;

(8) Lack of adequate ventilation, light, heating or sanitary facilities required by this article to such an extent as to endanger the health, safety, morals or general welfare of the occupants or other residents of the town;

(9) Lack of proper electrical, heating or plumbing facilities required by this article which constitute a health or safety hazard;

(10) Lack of adequate weatherization as required by sections 8-119 and 8-121;

(11) Lack of an operable smoke detector or an operable carbon monoxide detector, as required by section 8-126 and state law;

(12) Any combination of other conditions that are substandard under this article which, in the judgment of the inspector, renders any housing dangerous or injurious to the health, safety or morals of the occupants of the housing, the occupants of neighboring housing, or other residents of the town, including, but not limited to, defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation disrepair; structural defects; or uncleanliness.

(Code 1982, § 5-202; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-119. Structural condition.

The following standards shall constitute the minimum standards for structural condition of any housing:

(1) *Foundations.*

a. A foundation wall shall support the building at all points and shall be free of holes and cracks which would admit rodents, water or dampness to the interior of the housing or lessen the capability of the foundation to support the housing.

b. Footings shall be sound and have adequate bearing capacity.

c. Piers shall be sound with no loose mortar or masonry.

d. No pier in which the plumb line from top center falls outside the middle one-third of the pier base shall be allowed.

e. No wood stiff-knees or other improper piers shall be allowed.

f. The space between the ground and the first floor of all housing shall be enclosed with masonry or other permanent material of at least one-half inch in thickness, except where underpinning is not consistent with the architecture of the housing, as determined by the inspector. Where wood is used as underpinning, such wood, in addition to the conditions set out above, shall be weather-treated and permanently affixed. Where no underpinning is required, the ground level floor shall be substantially weathertight and insulated to R-19 value.

g. Crawl space shall be graded so as to prevent any standing water.

h. A crawl space access hole having a door shall be provided to any under-floor space in all housing.

i. Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

(2) *Floors.*

a. Floors shall have adequate supporting members and strength to be reasonably safe for the purpose used, shall not have improperly distributed loads, and shall not be overloaded.

b. There shall be no use of the ground for floors, nor shall there be wood floors on the ground.

c. There shall be no decayed, termite-damaged, fire-damaged, broken, overloaded or sagging sills, beams, girders, joists, or flooring that adversely affect the structural integrity of the housing framing system, floor framing system, or flooring.

d. Flooring shall be weathertight and watertight without holes or cracks which permit excessive air to penetrate rooms, and shall be kept in a clean and sanitary condition.

e. There shall be no loose flooring and floors and supporting members shall be reasonably smooth and level so as not to constitute a trip hazard.

f. Every kitchen, laundry room, water closet compartment and bathroom floor surface shall be constructed and maintained so as to permit such floor to be reasonably impervious to water. The floor surfaces shall be covered with a nonabsorbent material.

(3) *Walls, exterior.*

a. Walls or partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, and shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.

b. There shall be no wall in which the plumb line from the top to the floor exceeds three inches.

c. All exterior surfaces shall be structurally sound, waterproof, weatherproof and verminproof.

d. All exterior finishes shall be weathertight with no holes, cracks or rotted boards which permit outside air or water to penetrate rooms.

e. Windows shall be easily openable, shall have panes without cracks or holes, and the sash shall fit properly.

f. There shall be no deterioration due to the elements because of lack of preventive maintenance consisting of painting, waterproofing and repair.

(4) *Walls, interior.*

a. Interior walls of all rooms, closets and hallways shall be finished of suitable materials.

b. The interior finish shall be free of holes and cracks which permit air to penetrate rooms excessively.

c. No studs shall be rotted or termite-damaged.

d. No broken or cracked studs or other broken or cracked structural members shall be allowed.

e. All walls, woodwork, doors and windows shall be kept clean and free of any flaking, loose or peeling paint.

f. Cardboard, newspaper or other highly combustible or improper wall finish is prohibited.

g. No interior walls or vertical studs which seriously list, lean or buckle shall be allowed.

(5) *Ceilings.*

a. Ceilings of all rooms, closets and hallways shall be finished of suitable materials, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

b. No joists shall be rotted, broken or sagging or have improperly supported ends.

c. There shall be no holes or cracks which permit air excessively to penetrate rooms.

d. No loose plaster, loose boards, loose sheetrock or other loose ceiling finish shall be permitted.

e. There shall be no cardboard or other highly combustible material used as a ceiling finish.

f. All ceilings shall be kept clean and free of any flaking, loose or peeling paint and paper.

(6) *Roof.*

a. The roof and flashings shall be constructed and maintained so as to be weathertight and watertight.

b. Rafters shall not be rotted, broken, sagging or have improperly supported ends.

c. Attics shall be properly vented.

d. No rotted, loose or sagging sheathing shall be allowed.

e. No loose roof covering shall be allowed, nor shall there be allowed any holes or leaks which could cause damage to the structure or rooms.

f. Walls and chimneys shall have proper flashing.

g. No rafters shall be damaged by fire.

h. Roofs shall not have improperly distributed loads and shall not be overloaded.

(7) *Porches, landings, etc.*

a. Foundation, floor, ceiling and roof shall be equal to standards as set forth above, except sills and joists need not be level if providing drainage of floors; floors need not be weathertight; floors need not be level if providing for drainage; ceiling height shall not be less than seven feet, zero inches and attic need not be vented.

b. Posts and railings shall not be rotted or termite-damaged.

c. Every porch, terrace or entrance platform located at least 30 inches above the adjacent finished grade shall be equipped with adequate railings.

d. Every porch and any railing or other appurtenance thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.

(8) *Stairs and steps.*

a. Stairs and steps shall be free of holes, grooves and cracks that are large enough to constitute accident hazards.

b. Stairwells and flights of stairs, attached to or within a dwelling unit, that contain more than four risers shall have rails not less than 30 inches and not more than 38 inches measured vertically from the nose of the treads to the top of the rail.

c. Every rail on all porches, balconies or any raised surface greater than 30 inches from finished grade shall be firmly fastened and maintained in good condition.

d. No flight of stairs settled more than one inch out of its intended position or pulled away from supporting or adjacent structures shall be allowed.

e. No rotting, sagging or deteriorated supports shall be allowed.

f. Stairs shall be plumb, level and treads shall be uniform in width, and risers uniform in height, sound and securely fastened to structure. A slight uniform tilt of the treads to aid in the runoff of water is permissible for exterior steps.

g. Every outside and inside stair and any railing or other appurtenance thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.

(9) *Egress.* A safe, continuous and unobstructed egress shall be provided from every dwelling unit to required exit to the external street or grade level as required by the state residential building code in case of fire or panic.

(10) *Chimneys.* There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.

(11) *Basement walls.* Basement walls shall be constructed and maintained so as to be weathertight and watertight.

(12) *Doors and windows.* All doors and windows exposed to the weather, and all basement or cellar doors and hatchways, shall be constructed and maintained so as to be weathertight, watertight, rodentproof, and in sound working condition and good repair.

(Code 1982, § 5-203; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-120. Basic plumbing, heating and electrical equipment and facilities.

(a) *Plumbing system.*

(1) All housing shall be connected to a potable water supply and to a public sewer or other approved sewage disposal system.

(2) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.

(3) All plumbing fixtures shall meet the standards of the state plumbing code and shall be maintained in a state of good repair and in good working order.

(4) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of such dwelling unit. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

(b) *Heating system.* All housing shall have facilities for providing heat in accordance with the following:

(1) *Central and electric heating systems.* Every central or electric heating system shall be of sufficient capacity to heat all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected with a minimum temperature of 68 degrees Fahrenheit measured at a point three feet above the floor at an outside temperature of 20 degrees Fahrenheit.

(2) *Other heating facilities.* Where a central or electric heating system is not provided, all housing shall be provided with sufficient fireplaces, chimneys, flues, gas vents or other facilities to which heating appliances may be connected to heat all habitable rooms with a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor at an outside temperature of 20 degrees Fahrenheit.

(3) All heating systems and facilities shall meet the standards of the state mechanical code and shall be maintained in a state of good repair and in good working order.

(4) Portable kerosene heaters are not acceptable as a permanent source of heat, but may be used as a supplementary source in single family dwellings and duplex units.

(c) *Electrical system.*

(1) All housing shall be wired for electric lights and receptacle outlets.

(2) Every habitable room shall contain at least two floor or wall-type receptacle outlets, connected in such manner as determined by the state electrical code.

(3) There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling or wall-type electric light fixture.

(4) In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three floor or wall-type receptacle outlets, one of which shall be a switched outlet.

(5) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient, operable by means of conveniently located light switches.

(6) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the state electrical code.

(7) No receptacles, ceiling fixtures or other fixtures shall be broken or hanging loose.

(8) There shall be no bare wires, open joints or spliced cables.

(9) No branch circuits shall be overloaded or have overcurrent protection devices installed that exceed the current carrying capacity of that circuit.

(Code 1982, § 5-204; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-121. Light, ventilation and screening.

(a) *Window area.*

(1) Every habitable room shall have at least one window or skylight facing directly to the outdoors.

(2) The minimum total window area for every habitable room shall measure eight square feet or eight percent of the floor area, whichever is greater.

(3) Whenever walls or other portions of structures face a window of any room and such light-obstructing structures are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area.

(4) Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least 15 percent of the total floor area of such room.

(b) *Openable windows, ventilators.*

(1) Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room.

(c) *Bathroom and water closet rooms.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system.

(d) *Windows and doors.* Windows and doors shall be reasonably weathertight, shall have no broken glass, and shall have adequate operable locks and hardware.

(e) *Screening.*

(1) During the period of April 1 to October 1, inclusive, for protection against mosquitoes, flies and other insects, every door opening from any housing directly to outdoor space shall have supplied screens and a self-closing device, and every openable window or other device opening to outdoor space used, designed or intended to be used for ventilation shall likewise be supplied with screens.

(2) Habitable space which is mechanically ventilated year-round by permanently installed central air conditioning equipment shall be exempt from this standard.

(f) *Basement and cellar screening.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be equipped with screens or such other approved device as will effectively prevent their entrance.
(Code 1982, § 5-205; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-122. Space, use and location.

Every dwelling unit shall contain at least the minimum room size and egress requirements for habitable space required by the applicable state residential building code. In addition:

(1) *Principal room.* A living or principal room shall contain not less than 150 square feet.

(2) *Kitchens.* Kitchens shall contain not less than 50 square feet, and a kitchen-dining room combination, if any, shall contain not less than 100 square feet.

(3) *First bedrooms.* The first bedroom shall contain not less than 100 square feet.

(4) *Other bedrooms.* All other bedrooms, if any, shall contain not less than 70 square feet each.

(5) *Minimum room size.* Each habitable room shall have at least 70 square feet.

(6) *Minimum floor area.* Every dwelling unit shall contain a total floor area of at least 150 square feet of habitable space for the first occupant, at least 100 square feet of additional habitable floor area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant over the number of four occupants. Children less than one year of age shall not be counted.

(7) *Minimum sleeping area.* In every dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age. In addition, egress requirements per N.C. Building Code, 1968 Edition, shall be met.

(8) *Ceiling height.* At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet and six inches.

(9) *Floor area calculation.* Floor area shall be calculated on the basis of habitable room area; however, closet area and wall area within the dwelling unit may count for not more than ten percent of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four and one-half feet shall not be considered as part of the floor area for the purpose of determining maximum permissible occupancy.

(10) *Cellars.* Cellars shall not be used for living purposes.

(11) *Basements.* Basements shall not be used for living purposes, unless:

a. The floor and walls are impervious to leakage of underground and surface runoff water;

b. The total window area, total openable window area and ceiling height are equal to those required for habitable rooms; and any room used for sleeping must meet subsection 7 above.

c. The required minimum window area of every habitable room is entirely above the grade adjoining such window area.

(Code 1982, § 5-206; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-123. Reserved.

Sec. 8-124. Sanitation.

(a) *Rubbish and garbage storage and disposal.*

(1) Yards and courts within the premises of any housing shall be kept clean and free of rubbish, trash, garbage, debris, litter or unstacked wood.

(2) All housing shall be supplied with approved containers and covers for storage of rubbish, as required by town ordinances, and the owner of such housing shall be responsible for the removal of rubbish.

(3) Every dwelling and every dwelling unit shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit, or an approved outside garbage can as required by town ordinances.

(b) *Drainage.* Every yard shall be properly graded in order to obtain thorough drainage and to prevent the accumulation of stagnant water.

(c) *Noxious weeds.* Every yard and all exterior property areas shall be kept free of species of weeds or plant growth which are noxious or detrimental to health.

(d) *Infestation.*

(1) Every occupant of housing consisting of a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises.

(2) Any occupant of housing containing more than one dwelling shall be responsible for such extermination whenever his unit is the only one infested.

(3) If infestation is caused by failure of the owner to maintain housing in a rodentproof or reasonably insectproof condition, or if infestation exists in two or more of the dwelling units in any housing in the shared or public parts of any housing containing two or more units, extermination shall be the responsibility of the owner.

(e) Violations of this Section may also be enforced pursuant to applicable sections of Chapter 18 of the Town Code of Ordinances.
(Code 1982, § 5-208; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-125. Reserved.

Sec. 8-126. Responsibilities of owners, operators and/or occupants.

(a) *Public areas.* Every owner of housing containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the housing and premises thereof.

(b) *Cleanliness.* Every occupant of housing shall keep in a clean and sanitary condition that part of the housing and premises thereof which he occupies and controls.

(c) *Rubbish and garbage.* Every occupant of housing shall dispose of all his rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases, the owner shall be responsible for the availability of rubbish and garbage storage facilities.

(d) *Supplied plumbing fixtures.* Every occupant of housing shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of such plumbing fixtures.

(e) *Care of facilities, equipment and structure.* No occupant shall willfully destroy, deface, or impair any of the facilities or equipment or any part of the structure of the housing occupied.

(f) *Smoke detectors.*

(1) The owner or operator of every occupied dwelling or dwelling unit shall provide each dwelling or dwelling unit with at least one operable smoke detector installed outside the sleeping areas, to be located on or near the ceiling.

(2) Detectors shall be electrically or battery operated and shall provide an audible alarm when activated.

(3) For purposes of this subsection, the term "operable" is defined as working when a battery is inserted or the electricity is on; however, neither the owner nor the landlord is obligated to provide the electricity or replacement batteries for its operation.

(4) Notwithstanding the provisions of this article, where the state building code requires the installation of an electrical smoke detector or alarm, that code or provision shall control.

(g) *Carbon monoxide detectors.* Carbon monoxide detectors shall be provided and maintained as required by state law.
(Code 1982, § 5-210; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-127. Powers and duties of housing inspector.

The housing inspector is hereby designated and appointed to enforce the provisions of this article and to exercise the duties and powers herein prescribed:

(1) To investigate housing conditions and to inspect housing located in the town in order to determine which housing is unfit for human habitation, and to carry out and effectuate the objectives of this article with respect to the repair, closing or demolition of such housing;

(2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;

(3) To keep a record of the results of inspection made under this article and an inventory of housing that does not meet the minimum standards of fitness herein prescribed;

(4) To administer oaths and affirmations, examine witnesses, and receive evidence;

(5) To enter upon premises for the purposes of making examinations and inspections; provided, such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(6) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of this article;

(7) To delegate any of the inspector's functions and powers under this article; and

(8) To perform such other duties as may be prescribed herein or by the town council.
(Code 1982, § 5-211; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-128. Inspections.

(a) *Authority to enter.* For the purpose of making inspections and otherwise performing duties under this article, the inspector is hereby authorized to enter, examine and survey at all reasonable times all housing for the purpose of performing the inspector's duty of safeguarding the health and safety of the occupants of housing and of the general public.

(b) *Obtaining a warrant.* Whenever an owner, occupant, or agent thereof shall deny the inspector reasonable access to any premises for purposes of making inspections, the housing inspector shall obtain a warrant to inspect as authorized by G.S. 15-27.2.
(Code 1982, § 5-212; Ord. No. 96-012, 11-14-1996)

Sec. 8-129. Procedure for enforcement.

(a) *Preliminary investigation; notice; hearing.* On the inspectors own motion, on request of any public authority, or upon receipt of a petition signed by any five residents of the town alleging that any housing is unfit for human habitation, the inspector shall undertake a preliminary investigation of the premises. If the inspector's preliminary investigation discloses a basis for such charges, the inspector shall issue a complaint stating the charges and containing a notice that a hearing will be held before the inspector or the inspector's designated agent at a place within the county in which the property is located, not less than ten nor more than 30 days after the serving of the complaint. The inspector shall serve the complaint and notice upon the owner of, and parties in interest in, such housing. The owner and any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

(b) *Issuance of order after hearing.* If, after such notice and hearing, the inspector shall determine that the housing under consideration is unfit for human habitation under the terms of this article, the inspector shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. If any party in interest took part in the hearing, the order shall also be served on that person. The order shall do the following:

(1) *Deteriorated housing.* If the housing is determined to be deteriorated, the order shall require the owner, within the time specified in the order, to repair, alter or improve it in order to render it fit for human habitation. The order may require that the housing be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the housing; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (d)(2)b of this section; or

(2) *Dilapidated housing.* If the housing is determined to be dilapidated, the order shall require the owner, within the time specified in the order, to demolish or remove such housing.

(3) *Historic housing.* Notwithstanding subsection (b)(2) above, or any other provision of law, if the housing is located in a historic district of the town and the historic district commission determines, after a public hearing as provided by ordinance, that the housing is of particular significance or value toward maintaining the character of the district, and the housing has not been condemned as unsafe, the order may require that the housing be vacated and closed consistent with G.S. 160A-400.14(a).

(c) *Notice to affordable housing organizations.* In compliance with G.S. 160A-443(8), whenever a determination is made that the housing must be vacated and closed, or removed or demolished, the inspector shall send notice of the order by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the inspector.

(d) *Failure to comply with order.*

(1) It shall be unlawful for the owner of any housing to fail, neglect, or refuse to repair, alter, or improve the same, or to fail, neglect or refuse to vacate and close or vacate and demolish and remove such housing, upon order of the inspector duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense.

(2) Unless specifically provided otherwise, violation of this article shall be a civil offense. If an owner fails to comply with an order to repair, alter or improve or to vacate and close, or demolish or remove any housing, any one, all, or combination of the enforcement actions authorized by law may be taken, including those set forth herein.

a. *Civil penalty.*

1. If the owner of any deteriorated or dilapidated housing shall fail to comply with an order of the inspector within the time specified therein, or if any housing is occupied in violation of this article or any valid order or decision of the inspector or board of adjustment made pursuant to this article, the owner shall be subject to a civil penalty of $100.00 for the first 30 day period or part thereof in which a violation is allowed to persist, $200.00 for the second 30 day period or part thereof in which a violation is allowed to persist, and $400.00 for the third or any subsequent 30 day period in which the violation is allowed to persist. Each subsequent 30 day period after the third will be subject to a civil penalty of $400.00. Each 30 day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense. If a person fails to pay the civil penalty within ten days after being notified of the amount due, the town may recover the civil penalty together with all costs by filing one or more civil actions in the general court of justice in the nature of a suit to collect a debt. The town attorney is hereby authorized to file suit on behalf of the town to collect any civil penalties, and the town manager is hereby authorized to verify and sign complaints on behalf of the town in such suits.

2. No civil penalty shall be imposed against an owner of unfit housing where the only violation rendering the housing unfit is a violation for which this article provides that the occupant is the sole person responsible, unless the owner is also the occupant.

3. If the owner of any deteriorated or dilapidated housing shall fail to comply with an order of the inspector within the time specified therein, or if any housing is occupied in violation of this article or any valid order or decision of the inspector or board of adjustment made pursuant to this article, two times or more within any 12-month

period regarding the same housing unit, the civil penalty for the second and all subsequent violations shall be double the amounts specified in subsection (d)(2)(a)(1) above.

b. *Action pursuant to ordinance.* If the owner of deteriorated or dilapidated housing fails to comply with an order of the inspector within the time specified therein and court ordered relief has not been sought or has not been granted as provided in subsection (d)(2)e, the inspector may cause the housing to be repaired, altered, improved, vacated, closed or demolished and removed, as required by the order, provided the inspector takes the following steps. The inspector may submit to the town council for adoption an ordinance describing the property and ordering the inspector to proceed to effectuate the purpose of this article with respect to the particular property or properties which the inspector found to be unfit for human habitation. No such ordinance shall be adopted to require demolition and removal of housing until the owner has first been given a reasonable opportunity to bring it into conformity with this article. Such ordinance shall be recorded in the office of the register of deeds of the county where the property is located, and shall be indexed in the name of the property owner in the grantor index. After the adoption of an ordinance authorizing that housing be vacated and closed, the inspector may post a placard on the main entrance of any housing so closed stating "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." If any occupant fails to comply with an order to vacate housing after adoption of such ordinance, the inspector may file a civil action in the name of the town to remove such occupant in accordance with G.S. 160A-443(7), including the provision of 30 days' prior notice to an occupant who is a tenant of the owner.

c. *Occupation in violation of posting a misdemeanor.* Notwithstanding any other provision of this article, in accordance with G.S. 160A-443(4), occupation of a building posted by the inspector pursuant to subsection (d)(2)b shall constitute a class 1 misdemeanor.

d. *Additional ordinance one year later.* If the town council shall have adopted an ordinance pursuant to subsection (d)(2)b above or, if the inspector shall have issued an order ordering a dwelling to be repaired or vacated and closed, as provided in subsection (b)(1) above, and if the owner has vacated and closed such housing and kept such housing vacated and closed for a period of one year pursuant to the ordinance or order, then, if the town council shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the housing in its vacated and closed status would be inimical to the health, safety, morals and welfare of the town in that the housing would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, or would render unavailable property and housing which might otherwise have been made available to ease the persistent shortage of decent and affordable housing, in such circumstances the town council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner requiring the owner to either repair or demolish and remove the housing within 90 days. Such ordinance shall

meet the requirements set forth in G.S. 160A-443(5a) and shall be recorded in the office of the register of deeds of the county where the housing is located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance within the time fixed by such ordinance, then the inspector shall effectuate the purpose of the ordinance.

e. *Court-ordered relief.* If the owner of any deteriorated housing shall fail to comply with an order of the inspector to repair, alter, or improve or to vacate and close such housing within the time specified therein, or if the owner of dilapidated housing shall fail to comply with an order of the inspector to demolish or remove such housing within the time specified therein, or if any housing is erected, constructed, altered, repaired, converted, maintained, or used in violation of this article or any valid order or decision of the inspector or board of adjustment made pursuant to this article, the inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use; to restrain, correct or abate the violation; to prevent the occupancy of the housing; or for any other purpose authorized by G.S. 160A-446(g) or other law.

f. *Other enforcement action.* The failure of the owner to comply with an order issued by the inspector may also be enforced through any equitable or other remedy deemed appropriate by the town and permitted by law.

(Code 1982, § 5-213; Ord. No. 96-012, 11-14-1996; Ord. No. 05-003, 2-24-2005; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

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

Sec. 8-130. Appeals from orders of the inspector; review by court.

(a) *Appeals board.* All appeals which may be taken from decisions or orders of the inspector pursuant to this article shall be heard and determined by the zoning board of adjustment. If the zoning board of adjustment ("board of adjustment") consists of more than five members, the chairman may designate five members to hear appeals under this article. As the appeals body, the board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The board shall keep an accurate record of all its proceedings.

(b) *When appeal may be taken.* An appeal may be taken by any person aggrieved thereby, or by any officer, board or commission of the town, from a final decision or an order of the inspector, unless a different method of appeal is provided for herein. Any appeal shall be taken within ten days from the rendering of the decision or service of the order, as the case may be, by filing with the inspector and with the board of adjustment a written notice of appeal which shall specify the grounds upon which the appeal is based. The notice of appeal must be accompanied by the appropriate fee, as established by the town council in the annual operating budget.

(c) *Duty of inspector upon the filing of an appeal.* Upon the filing of any notice of appeal, the inspector shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the final decision or order appealed from was made.

(d) *Staying of action.* When an appeal is from a decision or order of the inspector refusing to allow the person aggrieved thereby to do any act, the inspector's decision or order shall remain in force until modified or reversed. When an appeal is from a decision or order of the inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the inspector certifies to the board, after the notice of appeal is filed with the inspector, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of the inspector's requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the inspector, by the board of adjustment, or by a court of record upon petition made pursuant to G.S. 160A-446(f) and this section.

(e) *Hearing of appeals.* The board of adjustment shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. The provisions of the Town of Cary Land Development Ordinance regarding notice of hearings do not apply to the hearing before the board of adjustment. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the inspector, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have power also in passing upon appeals, in any case when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this article, to adapt the application of this article to the necessities of the case to the end that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. A copy of the board's decision shall be served on the appellant by the inspector.

(f) *Petition to superior court.*

(1) Every decision of the board of adjustment shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the date of service of the decision of the board, but not otherwise.

(2) Any person aggrieved by an order issued by the inspector or a decision rendered by the board of adjustment may petition the superior court for an injunction restraining the inspector from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be held in accordance with G.S. 160A-446(f).

(Code 1982, § 5-214; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-131. Filing of notice of lis pendens.

Lis pendens (a pending suit), in general terms, is a notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and they are in danger of being bound by an adverse judgment. Upon the issuance of a complaint and notice of hearing or order pursuant thereto, a notice of lis pendens, with a copy of the complaint and notice of hearing or order

attached thereto, may be filed by the inspector in the office of the clerk of superior court for the county, as provided in G.S. 1-120.2. The inspector shall serve a copy of the notice of lis pendens upon the owners and parties in interest in the housing. The inspector may have the notice of lis pendens canceled at such time as the housing is brought into conformity with this article by sending to the clerk of superior court a notice asking that the notice of lis pendens be canceled.
(Code 1982, § 5-215; Ord. No. 96-012, 11-14-1996)

Sec. 8-132. Methods of service of complaints and orders.

(a) Complaints or orders issued by the inspector shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the town at least once no later than the time at which personal service would be required under these provisions. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.
(Code 1982, § 5-216; Ord. No. 96-012, 11-14-1996; Ord. No. 05-003, 2-24-2005)

State law reference—Similar provisions, G.S. 160A-445.

Sec. 8-133. Costs a lien on premises; disposition of property.

(a) *Lien.* As provided by G.S. 160A-443(6), the cost of any repairs, alterations, or improvements, or of vacating and closing, or removal or demolition, caused to be made or done by the inspector pursuant to this article shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, having priority, and be collected in the same manner as the lien for special assessments established by G.S. ch. 160A, art. 10 (G.S. 160A-216 et seq.). Such lien, if against real property located within the town limits, is also a lien on any other real property of the owner located within the town limits or within one mile thereof except for the owner's primary residence. This additional lien is inferior to all prior liens and shall be collected as a money judgment. All liens shall be filed in the office of the register of deeds of the county where the property is located.

(b) *Disposition.* If the housing is removed or demolished by the inspector, the inspector shall sell the materials of the housing, and any personal property, fixtures or appurtenances found in or attached to the housing, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the inspector, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court.
(Code 1982, § 5-217; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-134. Other remedies.

Nothing contained herein or in any other part of this article shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary action or otherwise; to enforce any provision of its charter, or its ordinances or regulations; or to prevent or punish violations thereof, and the procedure described herein shall be in addition and supplemental to the powers conferred on the town by any other law.
(Code 1982, § 5-218; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Chapter 9

CABLE TELEVISION*

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ARTICLE I. IN GENERAL

Secs. 9-1—9-18. Reserved.

ARTICLE II. CABLE TV FRANCHISES

DIVISION 1. GENERALLY

Sec. 9-19. Purpose.

(a) The town of Cary finds that the development of cable television systems has the potential to provide great benefits for the people of Cary. The town finds that the public convenience, safety and general welfare can best be served by establishing a regulatory ordinance which delineates the principal regulatory requirements for persons operating cable systems within the town. It is the intent of this chapter to provide for and specify the means to secure the interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

(b) For these purposes, the following goals underlie the regulations contained herein:

(1) Cable television services should be made available to the maximum number of town residents.

(2) Any cable system should be capable of accommodating both the present and reasonably foreseeable future cable television needs of residents of the town.

(3) Any cable system should be improved and upgraded during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.

(4) Cable systems authorized by this chapter shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of programming sources and services to the public.

(Ord. No. 04-009, § 6-1, 8-26-2004)

Sec. 9-20. Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning:

Basic cable service means any service tier which includes the retransmission of local television broadcast signals.

Cable service means the one-way transmission to subscribers of (i) video programming (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public right of way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621 (c)) of the communications act to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with section 653 of the Communications Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility system.

Cablecast signal means a nonbroadcast signal that originates within the facilities of the cable communications system.

Channel means a frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals.

Closed-circuit or institutional service means such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

Commercial subscriber means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

Communications act means the communications act of 1934 as it may be amended.

Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

Council means the council of the town of Cary.

CPI shall mean the national percentum increase for the most recently completed calendar year of the average consumer price index for all items as published by the bureau of labor statistics of the United States department of labor, subject to maximum limits as may be set forth within the franchise agreement.

Discrete channel shall mean a channel which can only be received by the person and/or institution intended to receive signals on such channel.

Downstream signal means a signal originating from or provided by a cable television system to a subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

Drop shall mean a connection from feeder cable to the subscriber/user television set, radio or other terminal.

Educational access channel means any channel designated for noncommercial educational access use.

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

FCC means the federal communications commission.

Franchise means the nonexclusive rights granted pursuant to this chapter to construct, operate and maintain a cable system along the public ways within all or a specified area in the town. Any such authorization, in whatever form granted, shall not mean or include any license or permit or other nondiscriminatory charge required for the privilege of transacting and carrying on a business within the town as required by other ordinances and laws of the town.

Franchise area means the entire town, or portions thereof, for which a franchise is granted under the authority of this chapter or the franchise. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the town, including all territory thereafter annexed to the town.

Franchise fee means the percentage, as specified by the town, of the franchisee's gross revenues in exchange for the rights granted pursuant to this chapter and the franchise.

Government access channel means any channel specifically designated or dedicated for noncommercial government access use.

Grantee or *franchisee* means the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the town, and its lawful successor, transferee or assignee.

Grantor means the town of Cary as represented by the town council acting within the scope of its jurisdiction.

Gross annual revenues or gross revenues means all revenues received directly or indirectly from the operation of the cable system to provide cable service in the town by the grantee, its affiliates, subsidiaries or any person in which grantee has a financial interest. Gross revenue shall include, but not be limited to:

(1) All cable service fees;

(2) Franchise fees;

(3) Installation and reconnection fees;

(4) Upgrade and downgrade fees;

(5) Advertising revenue;

(6) Home shopping commissions;

(7) Converter and remote control rental fees;

(8) Lockout device fees; and

(9) Unless excluded under generally accepted accounting principles ("GAAP"), guides and late fees.

Gross Revenues shall not include:

a. The revenues of any entity or Person where such revenues have been included in grantee's gross revenues so as to preclude double imposition of franchise fees;

b. Bad debt write-offs; or

c. Any taxes on services furnished by a grantee which are imposed upon any Subscriber or User by the state, town or other governmental unit and collected by the grantee on behalf of said governmental unit.

Installation shall mean the connection of the system from feeder cable to subscribers' terminals.

Leased access channel, or commercial access channel means any channel designated or dedicated for use by persons unaffiliated with the grantee, at rates which are fair and reasonable.

Monitoring means observing a communications signal, or the absence of a signal, where the observer is not a party to the communication, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

Narrowcasting shall mean the ability to distribute cable programming to a particular segment or segments of the cable subscribers.

Normal business hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal operating conditions means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Operator shall mean the entity granted a franchise.

Origination site means a location capable of transmitting audio-video television signals to the operator's headend or other location as provided.

OVS shall refer to open video system as defined by the federal communications commission.

Person means an individual, partnership, association, organization, corporation or any other legal entity including any lawful successor transferee of said individual, or entity.

Plant mile means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal. In cases where cable is on both sides of the street, only the cable on one side of the street will be utilized in measuring a plant mile.

Public access channel means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for noncommercial access use without charge on a first-come, first-served, nondiscriminatory basis.

Public way or public rights-of-way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way, including state and private streets, or hereafter held by the town which shall entitle the town and the company to the use thereof for the purpose of installing and maintaining the company cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the town that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the town as the town may have the undisputed right and power to give.

Reasonable notice shall be written notice addressed to the grantee at its principal office within the town or such other office as the grantee has designated to the town as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven business days, town holidays shall be excluded.

Resident means any person residing in the town as otherwise defined by applicable law.

Residential subscriber means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

Sale shall include any sale, exchange or barter.

School means any state accredited public or nonprofit educational institution including primary and secondary schools, colleges and universities.

Service interruption means the loss of picture or sound on one or more cable channels.

State means the state of North Carolina.

Town means the town of Cary, North Carolina.

Transfer means the disposal of the franchise by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise. "transfer" shall also mean a sale or fundamental corporate change of or in grantee, including, but not limited to, a fundamental

corporate change in grantee's parent corporation or any entity having a controlling interest in grantee, the sale of controlling interest in the grantee's assets, a merger, including a merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity.
(Ord. No. 04-009, § 6-3, 8-26-2004)

Secs. 9-21—9-43. Reserved.

DIVISION 2. GRANT OF FRANCHISE

Sec. 9-44. Grant.

(a) In the event that the town shall grant to grantees a nonexclusive, revocable franchise to construct, operate, and maintain a cable system within the town, said franchise shall constitute both a right and an obligation to provide the services of a cable system as regulated by the provisions of this chapter and the franchise. The franchise shall include by reference those provisions of the grantee's "application for franchise" that are finally negotiated and accepted by the town and grantee.

(b) The franchise shall be granted under the terms and conditions contained herein, consistent with the town's Charter, Code of Ordinances, and/or other applicable statutory requirements. In the event of conflict between the terms and conditions of this chapter, the franchise, or the terms and conditions on which the town can grant a franchise, the franchise shall control.

(c) Any franchise granted by the town is hereby made subject to the generally applicable, nondiscriminatory Code of Ordinances of the Town of Cary as amended from time to time. Nothing in the franchise shall be deemed to waive the requirements of the various generally applicable, nondiscriminatory codes and ordinances of the town regarding permits, fees to be paid, or manner of construction.
(Ord. No. 04-009, § 6-4, 8-26-2004)

Sec. 9-45. Franchise area.

The franchise area shall be the entire town, or portions thereof, for which a franchise is granted.
(Ord. No. 04-009, § 6-5, 8-26-2004)

Sec. 9-46. Use of public rights-of-way.

For the purpose of operating and maintaining a cable system in the town, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and within the rights-of-way within the town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable system, provided, however, that grantee complies with all design, construction and safety provisions contained in this chapter, the franchise, and other applicable state and generally applicable, nondiscriminatory local ordinances.
(Ord. No. 04-009, § 6-6, 8-26-2004)

Sec. 9-47. Use of grantee facilities.

No poles shall be erected by the grantee without prior approval of the town and as permitted by town ordinances and regulations. However, no location of any pole of the grantee shall be a vested right and such poles shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits, where possible. The town shall have the right, during the life of the franchise, to install, subject to an agreement between the parties upon the terms and conditions of such use, upon the poles owned by the grantee, any wire and pole fixtures that are noninterfering and noncompetitive with the cable system operations of the grantee. The town's right to use grantee facilities is not transferable.
(Ord. No. 04-009, § 6-8, 8-26-2004)

Sec. 9-48. Franchise required.

No cable system shall be allowed to occupy or use the streets of the town or be allowed to operate without a franchise.
(Ord. No. 04-009, § 6-9, 8-26-2004)

Sec. 9-49. Term of franchise.

The term of any franchise granted pursuant to this chapter shall be stated in the franchise.
(Ord. No. 04-009, § 6-10, 8-26-2004)

Sec. 9-50. Franchise nonexclusive.

The franchises discussed herein are nonexclusive. The town specifically reserves the right to grant at any time such additional franchises for a cable system or OVS as it deems appropriate provided, however, no such additional franchises, taken as a whole, shall be granted on terms or conditions more favorable or less burdensome than in any franchise previously granted by the town. To the extent allowable by law, any cable franchises granted by the town shall contain similar terms and conditions with respect to franchise fees, gross revenue base and service area.
(Ord. No. 04-009, § 6-11, 8-26-2004)

Sec. 9-51. Time is of the essence.

Whenever the franchise agreement shall set forth any time for an act to be performed by or on behalf of the grantee, such time shall be deemed of the essence and any failure of the grantee to materially perform within the time allotted shall be sufficient ground for the town to invoke an appropriate penalty, including possible revocation of the franchise, subject to notice and a time to cure.
(Ord. No. 04-009, § 6-12, 8-26-2004)

Sec. 9-52. Law governs.

In any controversy or dispute under this chapter, the law of the state or federal law, as appropriate, shall apply.
(Ord. No. 04-009, § 6-12, 8-26-2004)

Sec. 9-53. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter or the franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state, or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
(Ord. No. 04-009, § 6-14, 8-26-2004)

Sec. 9-54. Transfer of ownership or control.

(a) Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the town.

(b) The grantee shall promptly notify the town of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 50 percent or more at one time of the ownership or controlling interest in the grantee.

(c) Every change, transfer, or acquisition of control of the grantee requiring consent of the town shall make the franchise subject to cancellation unless and until the town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the town may inquire into the legal, financial, and technical qualifications of the prospective controlling party, and the grantee shall assist the town in any such inquiry.

(d) The town agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the town that it or its designees satisfactory to the town will take control and operate the cable system. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the town at its discretion and during said period of time it shall have the right to petition for transfer of the franchise to another grantee. If the town finds that such transfer, after considering the legal, financial and technical qualifications of the applicant are satisfactory, the town will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the town to such transfer shall not be unreasonably withheld.

(e) The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town in and to the streets, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this chapter and the franchise.

(f) The town will approve any transfer or assignment of the franchise prior to completion of construction of the proposed system, if guarantees for timely and quality construction are provided by the transferee, as may be reasonably requested by the town.

(g) Notwithstanding anything to the contrary, the prior approval of the town shall not be required for any assignment to any person controlling, controlled by or under the same common control as the grantee.

(h) Any approval by the town of the assignment or transfer of the franchise shall be contingent upon the prospective grantee becoming a signatory to the franchise.
(Ord. No. 04-009, § 6-15, 8-26-2004)

Sec. 9-55. Franchise renewal.

Upon completion of the term of any franchise granted under this chapter, the town may grant or deny renewal of the franchise of the grantee in accordance with the provisions of the communications act. The grantee shall own the cable system, but shall have no property right in the public rights-of-way upon the completion of the franchise term.
(Ord. No. 04-009, § 6-16, 8-26-2004)

Sec. 9-56. Police powers.

(a) In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the town (as provided in G.S. 160A-174) to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the town pursuant to such power.

(b) Any conflict between the provisions of this chapter or the franchise and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to grantee or cable systems which contains provisions inconsistent with this chapter shall prevail only if, upon such exercise, the town finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.
(Ord. No. 04-009, § 6-17, 8-26-2004; Ord. No. 2010-Code-02, 3-10-2010)

Sec. 9-57. Franchise fees.

(a) Because the town finds that:

(1) The streets of the state and town to be used by the grantee in the operation of its system within the boundaries of the franchise area are valuable public properties acquired and maintained by the state and town at great expense to its taxpayers; and

(2) The grant to the grantee to the said streets is a valuable property right without which the grantee would be required to invest substantial capital in rights-of-way costs and acquisitions; and

(3) The administration of this chapter or the franchise imposes upon the town additional regulatory responsibility and expense;

a grantee of any franchise hereunder shall pay to the town a franchise fee of five percent of gross annual revenues. This annual franchise payment shall be in addition to any other generally applicable, nondiscriminatory fee and commence as of the effective date of the franchise. The town shall be furnished a statement of said payment by a certified public accountant or officer of the grantee, reflecting the total amounts of gross annual revenues and the above charges and computations for the period of July 1 to June 30 as provided in section 9-205(9) of this chapter.

(b) If grantee's subscribers are offered what is, in effect, a discount or discounts for "bundled" services (i.e., cable service and some other, noncable goods or service), grantee shall not disproportionately discount the fees charged for cable service, relative to the discount in the fees charged for the other, noncable goods or services with the intent to minimize franchise fees payable to the town. This provision is only meant to apply where an overall discount on bundled services, or discounts on both cable service and other, noncable goods or services, is offered. Therefore, this provision does not apply when only a discount is offered on a noncable good or service, without any discount in the cable service. This provision is also not intended to prevent grantee from giving reasonable discounts for cable service, including, but not limited to, any discounts offered to new subscribers or to subscribers who upgrade the cable service they receive.

(c) This payment shall be in addition to any other generally applicable, nondiscriminatory lawful tax or payment owed to the governments or other taxing jurisdiction by the grantee. Payment of the franchise fee made by grantee to the town shall be in addition to any and all taxes which are now or may be required hereafter to be paid by any federal, state, or local law.

(d) Acceptance by the town. No acceptance of any payment by the town shall be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.

(e) Failure to make required payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the town's primary depository bank during the period that such unpaid amount is owed.

(f) The franchise fee shall be payable quarterly to the town of Cary. The grantee shall file a complete and accurate statement, certified by an officer of the grantee, of all gross revenue within the town during the period for which said quarterly payment is made, and said statement and payment shall be made to the town not later than 45 days after the expiration of each calendar quarter. Quarterly computation dates are the last day in the months of March, June, September and December.

(g) The town shall have the right to inspect the grantee's books and records pertinent to the computation of the franchise fee and the right to audit and to recompute any amounts determined to be payable under this chapter. Audits shall be conducted by town staff or an independent auditor chosen by the town. If, after audit and recomputation, an undisputed unpaid fee is owed to the town, it shall be paid within 30 days following written notice of the grantee by the town which notice shall

include a copy of the audit report. The town's audit expenses shall be borne by the town unless the audit discloses an underpayment of franchise fees in an amount equal to or exceeding five percent of the total franchise fee payment for the audit period, in which case the costs of the audit shall be borne by the grantee as a cost incidental to the enforcement of this franchise. Any additional undisputed amounts due to the town as a result of an audit shall be paid by the grantee to the town within 60 days following written notice to the grantee by the town of the underpayment, which notice shall include a copy of the audit report.
(Ord. No. 04-009, § 6-18, 8-26-2004)

Sec. 9-58. Forfeiture or revocation.

(a) *Grounds for revocation.* The town reserves the right, subject to the provisions of subsection (b) and (c) of this section 9-58, to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this chapter and the franchise grant:

(1) If the grantee shall default in the performance of any of the material obligations under this chapter or the franchise.

(2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.

(3) If the grantee shall violate any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this chapter or the franchise which results in a default of any of the material obligations under this chapter or the franchise.

(4) If the grantee practices any fraud upon the town or pattern of fraud on cable subscribers.

(5) The grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the town or is not remedied through liquidated damages.

(6) The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.

(7) Failure to restore system-wide or area specific service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the town or if the grantee ceases to operate and provide services for any reason within the control of the grantee.

(8) Material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.

(b) *Effect of circumstances beyond control of grantee.* The grantee shall not be declared at fault or be subject to any sanction under any provision of this chapter in any case, in which performance of any such provision is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond the grantee's control if committed by a corporation or other business entity in which the grantee holds a controlling interest whether held directly or indirectly.

(c) *Procedure prior to revocation.*

(1) The town shall make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand or, in any case where such compliance cannot reasonably be completed within 30 days, other such longer period of time as reasonably set by the town, the town shall place its request for termination of the franchise upon a regular council meeting agenda. The town shall cause to be served upon such grantee at least seven business days prior to the date of such council meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published by the town clerk at least once, seven business days before such meeting according to the advertising requirements in Section 2-2 of the Town Code.

(2) The council shall hear any persons interested therein at the public hearing, and shall determine in its reasonable judgment, whether any failure, refusal or neglect by the grantee was with just cause.

(3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the town in its judgment reasonably exercised, the council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(4) If the council shall determine such failure, refusal, or neglect by the grantee was without just cause, then the council may, by resolution, declare that the franchise of the grantee shall be terminated and bond forfeited unless there be compliance by the grantee within 90 days.

(d) *Disposition of facilities.* In the event a franchise renewal is denied (and all appeals exhausted), is revoked or otherwise terminated, the town may require grantee to remove its facilities from town rights-of-way.

(e) *Restoration of property.* In the event grantee removes its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public property, rights-of-ways, private property, and places in as reasonably good condition as that prevailing prior to the grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires or attachments. The town shall inspect and approve the condition of the public rights-of-ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this subsection, this chapter and the franchise.

(f) *Restoration by town; reimbursement of costs.* In the event of a failure by the grantee to complete any work required by sections 9-46 and 9-47 and/or (e) above, or any other work required by town law or ordinance within the time as may be established and to the satisfaction of the town, the town may cause such work to be done and the grantee shall reimburse the town the cost thereof within 30 days after receipt of an itemized list of such costs, or the town may recover such costs through the performance bond or letter of credit provided by grantee. The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(g) *Extended operation.* Upon either the denial or renewal (including the exhaustion of all appeals) or revocation of a franchise, the town may negotiate with the grantee to continue to operate the system for a period of time from the date of such expiration or revocation, or until such time as is mutually agreed upon. The grantee shall, as trustee for its successor in interest, continue to operate the cable system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at the time.
(Ord. No. 04-009, § 6-19, 8-26-2004; Ord. No. 2014-Code-01, 1-9-2014)

Sec. 9-59. Receivership and foreclosure.

(a) *Termination by insolvency.* The franchise granted hereunder shall, at the option of the town, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and

(2) Such receivers, or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

(b) *Termination by judicial action.* In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof, including or excluding the franchise, the town may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of such notice, unless:

(1) The town shall have approved the transfer of the franchise, in the manner this chapter provides; and

(2) Such successful bidder shall have covenanted and agreed with the town to assume and be bound by all the terms and conditions of the franchise.
(Ord. No. 04-009, § 6-20, 8-26-2004)

Sec. 9-60. Equal opportunity policy.

Grantee shall comply with all equal opportunity provisions enacted by federal and state authorities, as well as all such provisions contained in this chapter and the franchise.
(Ord. No. 04-009, § 6-21, 8-26-2004)

Sec. 9-61. Notices.

All notices from grantee to the town pursuant to this chapter and the franchise shall be to the town manager or his/her designee. Grantee shall maintain with the town, throughout the term of the franchise, an address for service of notices by mail. Grantee shall also maintain with the town a local office and telephone number for the conduct of matters related to the franchise during normal business hours. The grantee shall be required to advise the town of such address(es) and telephone numbers and any changes thereof.
(Ord. No. 04-009, § 6-22, 8-26-2004)

Sec. 9-62. Failure to enforce, no waiver.

The grantee shall not be excused from complying with any of the terms and conditions of this chapter or the franchise by any failure of the town upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
(Ord. No. 04-009, § 6-23, 8-26-2004)

Sec. 9-63. Rights reserved to the grantor.

(a) *Right of inspection of records.* The town shall have the right to inspect the books, records, reports, maps, plans and financial statements of the grantee relating to operations within the town as reasonably necessary to the enforcement of the chapter and the franchise on reasonable notice during normal business hours.

(b) *Right of inspection of construction.* The town shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this chapter and other pertinent provisions of the law, provided that such inspections and/or tests shall be conducted in a manner which minimizes interference with the grantee's normal operations. The grantee shall make a good faith effort to assist the town with such inspections and/or tests.

(c) *Right of inspection of property.* At all reasonable times, grantee shall permit examination by any duly authorized representative of the town of the cable system, together with any appurtenant property of grantee situated within or without the town.

(d) *Right of intervention.* The town shall have the right of intervention in any suit or proceeding to which the grantee is a party and in which the town shall have a material interest. The grantee shall not oppose such intervention by the town.

(e) *Right to require removal of property.* Upon denial of renewal (and exhaustion of all appeals) of the franchise, or upon its revocation or expiration, as provided for herein, the town shall have the right to require the grantee to remove, at its own expense, all portions of the cable system required by public necessity from all streets and public ways within the town.
(Ord. No. 04-009, § 6-24, 8-26-2004)

Sec. 9-64. Limits on recourse against the grantor.

The provisions of 47 USC 555a shall apply in any court proceeding involving any claim against the town, or any official, member, employee, or agent of the town's, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a franchise.
(Ord. No. 04-009, § 6-25, 8-26-2004)

Secs. 9-65—9-86. Reserved.

DIVISION 3. REGULATION OF FRANCHISE

Sec. 9-87. Regulatory authority.

(a) The town shall exercise appropriate regulatory authority under the provisions of this chapter and applicable law. This authority shall be vested in the town council and administered through the town manager or designee in order to provide day-to-day administration and enforcement of the provisions of this chapter and any franchise granted hereunder, and to carry out the town's responsibilities with regard to cable service and cable systems.

(b) The town reserves the right to exercise the maximum plenary authority allowed by state and federal law, regarding rates, technical standards and consumer protection.
(Ord. No. 04-009, § 6-26, 8-26-2004)

Sec. 9-88. Supervision of the franchise.

(a) The town shall have the following regulatory responsibility:

(1) Administration and enforcement of the provisions of this chapter and any franchise granted hereunder.

(2) Award, renewal, extension or termination of a franchise pursuant to the provisions of this chapter, the franchise, and other applicable law.

(3) Consent prior to sale or transfer of any franchise granted hereunder.

(4) Performance evaluation.

(b) The town also reserves the right to perform the following functions:

(1) Develop objectives and coordinate activities related to the operation of government channels.

(2) Approve procedures and standards for public, government and educational access operations and services, including the use of dedicated channels and sharing of public facilities.

(3) Review and make recommendations on plans for expansion, interconnection and growth of cable services.

(4) Review and make recommendations on the possibility of integrating cable systems with other town, state or regional telecommunications networks.

(5) Formulate and recommend long-range telecommunications policy for the town, and determine the future cable-related needs and interests of the community.

(6) Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of this chapter or the franchise.

(7) Monitor grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.

(8) Receive applications for rate increases if applicable and provide staff assistance in the analysis and recommendations thereto.

(9) Monitor grantee's adherence to operational standards, service requirements and line extension policies.

(10) Assure compliance with applicable laws and ordinances.

(11) Arrange tests and analysis of equipment and performance, as needed to insure compliance with this chapter and the franchise.

(12) Assure continuity in service.

(13) Receive for examination all data and reports required by this chapter.

(c) There may be established a citizen's advisory commission entitled the cable television advisory commission, which shall consist of between three and seven members representing the population characteristics of the residents of the town. Members may be appointed by the town council for terms up to three years. No person shall be appointed as a member of the commission for more than two consecutive terms. The commission shall adopt bylaws governing its procedures and actions on matters coming before it.

(d) The responsibilities of the cable television advisory commission may, as set by the town, include but not be limited to the following:

(1) Monitor and advise the town council and town administration on the provisions of the town's cable television services ordinance and related ordinances.

(2) Prepare an annual report to the council.

(3) Cooperate with the town and the grantee in fulfilling its responsibilities herein.

(Ord. No. 04-009, § 6-27, 8-26-2004)

Sec. 9-89. Rates and charges.

(a) *Authority to regulate.* The town may regulate grantee's rates and charges consistent with applicable federal and state law. The term "regulate" means the town may take any step consistent with applicable federal and state law.

(b) *Manner of regulation.* Without limiting the foregoing, and except as inconsistent with applicable law:

(1) The town may require grantee to submit to the town current rates as of the effective date.

(2) The grantee may not change a rate or charge that is subject to the town's regulation without the town's prior approval, except as applicable law otherwise provides.

(c) *Rate and services schedule*. The grantee shall maintain on file with the town an up-to-date rate schedule of all subscriber and user rates, fees and charges for all cable services and products provided. The schedule shall be updated any time there is a change in the rate schedule. grantee shall file any revised rate schedule with the town clerk in accordance with the requirements of this chapter. In addition, the grantee shall give the town 30 days advance written notice of any change in services offered or rates.
(Ord. No. 04-009, § 6-28, 8-26-2004)

Sec. 9-90. Performance evaluation.

(a) Special evaluation sessions may be held at any time during the term of the franchise at the request of the town.

(b) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided by this Code.

(c) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to system performance and construction, grantee compliance with this chapter and the franchise, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(d) During the review and evaluation by the town, the grantee shall fully cooperate with the town and shall provide such information and documents prepared by grantee in the ordinary course of business as the town may need to reasonably perform its review.
(Ord. No. 04-009, § 6-29, 8-26-2004)

Secs. 9-91—9-108. Reserved.

DIVISION 4. BONDS, INSURANCE AND INDEMNIFICATION

Sec. 9-109. Performance bond and letter of credit.

(a) *Performance bond.* The town may require the grantee, as part of a franchise agreement, to obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the town, a corporate surety bond in an amount specified in this chapter or the franchise to guarantee the faithful performance of the grantee of all its obligations provided under this chapter and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this section.

(b) *Conditions.* The performance and/or payment bond shall provide the following conditions:

(1) There shall be recoverable by the town jointly and severally from the principal and surety, any and all fines and liquidated damages to the town and any and all damages, losses, costs, and expenses' suffered or incurred by the town resulting from the failure of the grantee to: faithfully comply with the provisions of this chapter and the franchise; franchise fee not in dispute; pay any claims, liens or generally applicable, nondiscriminatory taxes due the town which arise by reason of the construction, operation, maintenance or repair of the Cable System. Such losses, costs and expenses shall include but not be limited to attorney's fees and other associated expenses.

(2) The total amount of the bond shall be forfeited in favor of the town in the event:

a. The grantee abandons the cable system at any time during the term of the franchise or any extension thereto; or

b. The grantee assigns the franchise without appropriate, lawful consent of the town, when such consent is required.

(c) *Reduction of bond.* Upon written application by the grantee, the town may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the town's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within one year of any prior application.

(d) *Letter of credit*. The town may require the grantee, as part of a franchise agreement, to obtain, maintain and file with the town an irrevocable letter of credit from a financial institution licensed to do business in the state in an amount specified in the franchise, naming the town as beneficiary. The form and contents of such letter of credit shall be approved by the town and shall be released only upon expiration of the franchise or upon the replacement of the letter of credit by a successor grantee. Failure to obtain the letter of credit within the time specified within the franchise shall constitute a substantial violation within the meaning of this section.

(e) *Conditions.* The town may draw upon the letter of credit if the grantee fails to: faithfully comply with the material provisions of this chapter and the franchise; comply with all lawful orders, permits and directives of any town agency or body having jurisdiction over its acts or defaults pursuant to the franchise; pay fees due to the town; or pay any lawful claims, liens or generally applicable, nondiscriminatory taxes due the town which arise by reason of the construction, operation, maintenance or repair of the cable system.

(f) *Use of performance bond and letter of credit.* Prior to drawing upon the letter of credit and/or the performance bond for the purposes described in this section, the town shall notify the grantee in writing that payment is due and the grantee shall have ten days from the receipt of such written notice to make a full and complete payment or request a hearing before council. If the grantee does not make the payment within ten days or request a hearing before council, the town may withdraw the amount thereof, with interest and penalties, from the letter of credit and the performance bond.

(g) *Notification.* Within three days of a withdrawal from the letter of credit and/or performance bond, the town shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

(h) *Replenishment of letter of credit and performance bond.* No later than 30 days after mailing to the grantee by certified mail notification of a withdrawal pursuant to subsection (f) above, the grantee shall replenish the letter of credit and/or performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the letter of credit and/or performance bond shall constitute a substantial violation of this chapter.

(i) *Nonrenewal, alteration, or cancellation of letter of credit or performance bond.* The performance bond and/or letter of credit required in the franchise shall be in a form satisfactory to the town and shall require 30 days written notice of any nonrenewal, alteration or cancellation to both the town and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the town, written evidence of the issuance of replacement bond or policies within 30 days following receipt by the town or the grantee of any notice of cancellation.

(j) *CPI increase.* To offset the effects of inflation, the amounts of the bond and letter of credit provided for herein are subject to reasonable CPI increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the town.
(Ord. No. 04-009, § 6-30, 8-26-2004)

Sec. 9-110. Liability and insurance.

(a) Prior to commencement of construction, but in no event later than 60 days after the effective date of the franchise and thereafter continuously throughout the duration of the franchise and any extensions or renewals thereof, the grantee shall furnish to the town certificates of insurance, approved by the town, for all types of insurance required under this section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this chapter.

(b) Certificates of insurance obtained by the grantee in compliance with this section shall be filed and maintained with the town clerk during the term of the franchise.

(c) Neither the provisions of this section nor any damages recovered by the town hereunder shall be construed to or limit the liability of the grantee under any franchise issued hereunder for damages.

(d) All insurance policies maintained pursuant to this chapter or the franchise shall contain the following, or a comparable, endorsement:

> It is hereby understood and agreed that this insurance policy may not be cancelled by the insurance company nor the intention not to renew be stated by the insurance company until 30 days after receipt by the town manager, by registered mail, of a written notice of such intention to cancel or not to renew.

(e) All contractual liability insurance policies maintained pursuant to this chapter or the franchise shall include the provision of the following hold harmless clause:

The grantee agrees to indemnify, save harmless and defend the town, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this agreement and performed or caused to be performed by grantee. The foregoing indemnity shall apply except if such injury, death or damage is caused by the negligence or other fault of the town, its agents, servants, or employees or any other person indemnified hereunder.

(f) All insurance policies provided under the provisions of the franchise shall be written by companies authorized to do business in the state, and approved by the state board of insurance.

(g) At any time during the term of the franchise, the town may request and the grantee shall comply with such request, to name the town as an additional named insured for all insurance policies written under the provisions of this chapter or the franchise.

(h) To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein are subject to reasonable CPI increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the town; provided, however, in no event shall the town require amounts in excess of what is customarily provided by cable system operators in North Carolina.

(i) General liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, general liability insurance insuring the grantee in the minimum of:

(1) Five hundred thousand dollars for property damage per occurrence;

(2) One million dollars for property damage aggregate;

(3) One million dollars for personal bodily injury to any one person; and

(4) Two million dollars bodily injury aggregate per single accident or occurrence.

(j) Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(k) Automobile liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, automobile liability insurance for owned, nonowned, or rented vehicles in the minimum amount of:

(1) One million dollars (for bodily injury and consequent death per occurrence.

(2) One million dollars for bodily injury and consequent death to any one person.

(3) Five hundred thousand dollars for property damage per occurrence.

(l) Worker's compensation and employer's liability insurance. The grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of:

(1) Statutory limit for worker's compensation.

(2) One hundred thousand dollars for employer's liability.

(Ord. No. 04-009, § 6-31, 8-26-2004)

Sec. 9-111. Indemnification.

(a) Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the town, its officers, boards and commissions, and town employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the town in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of grantee, its servants, agents or employees, or which shall be caused by grantee's negligence pursuant to the provisions of the franchise.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to public, educational, and government access programming) with the respect to services provided or caused to be provided by grantee.

(3) Arising out of grantee's failure to comply with the provisions of any federal, state, or generally applicable, nondiscriminatory local statute ordinances or regulation applicable to grantee in its business hereunder.

(b) The foregoing indemnity is conditioned upon the town:

(1) Promptly notifying grantee of any claim or legal proceeding which gives rise to such right;

(2) Affording grantee the opportunity to participate in and fully control any defense, compromise, settlement, resolution or disposition of such claim or proceeding; and

(3) Fully cooperating in the defense of such claim and making available to grantee all such information under its control relating thereto.

(Ord. No. 04-009, § 6-32, 8-26-2004)

Secs. 9-112—9-135. Reserved.

DIVISION 5. DESIGN AND CONSTRUCTION PROVISIONS

Sec. 9-136. Authority to construct.

Within 90 days of the adoption of an initial franchise agreement, Franchisee shall meet with the town Manager and/or his/her designee to review the status of the initial system's construction plan and 18 month construction schedule. Within 30 days following this meeting, the grantee shall apply for any needed contracts for use of poles. Within 30 days after completion of the make-ready survey identifying the routes of the system facility, the grantee shall apply for all additional licenses from the state, town, or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this chapter.
(Ord. No. 04-009, § 6-33, 8-26-2004)

Sec. 9-137. Construction and technical standards.

(a) Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards. The grantee, through the system, shall provide uniform, strong signals which are free from any significant distortion and interference. The system shall be designed, constructed, operated and maintained for 24 hours a day continuous operation. The system shall produce, for reception on subscribers' receivers which are in good working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality.

(b) The grantee shall construct, install, operate and maintain its system in accordance with the following minimum standards:

(1) The system will be spaced to permit a minimum of 750 MHz operation.

(2) The grantee shall maintain its cable system in a manner which will continue to enable it to add new services and associated equipment.

(c) Prior to the erection of any towers, poles or conduits, the grantee shall make available to the town and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture shall be commenced by any person until approval thereof has been received from the town, consistent with all generally applicable, nondiscriminatory town ordinances and regulations and timeframes, including articles VI and VII of chapter 28 of the town's code of ordinances in effect as of the date of any franchise granted pursuant to the provisions hereof.

(d) Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the state, and all generally applicable, nondiscriminatory local ordinances, and shall be subject to the terms of this chapter, and all applicable federal and state laws.

(e) The grantee's system and associated equipment erected by the grantee within the town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the grantee shall be placed in such a manner as to interfere with normal travel on such public way.

(f) The town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.

(g) Construction, installation, operation, upgrade, and maintenance of the cable system shall be performed in an orderly manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(h) Grantee shall at all times comply with:

(1) National Electrical Safety Code (National Bureau of Standards);

(2) National Electrical Code (as adopted by the state);

(3) Applicable FCC or other federal, state and generally applicable, nondiscriminatory local regulations; and standards as set forth in this chapter or the franchise;

(4) Manual on Uniform Traffic Control Devices; and

(5) The relevant sections in the town of Cary's Design Specifications and Detail Manual in effect as of the date of any franchise granted pursuant to the provisions hereof.

In no event shall grantee or its contractors leave open any excavation within the town but outside the town's rights-of-ways for more than ten days from when the excavation was made. Further, grantee shall bury all drops or other cable within ten days, except when ground conditions do not permit grantee to do so. When grantee is unable to comply with this deadline due to ground conditions, grantee shall bury the drop or other cable as soon as ground conditions permit grantee to do so.

(i) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.

(j) Any antenna structure used in the cable system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state law or regulation.

(k) All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable system shall comply with the standards of the occupational safety and health administration.

(l) RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern. FCC rules and regulations shall govern.

(m) The grantee shall maintain equipment capable of providing standby power for a minimum of eight hours for the headend.
(Ord. No. 04-009, § 6-34, 8-26-2004)

Sec. 9-138. System construction schedule.

The franchise shall specify the initial construction schedule which shall be approved by the town before initial construction begins.
(Ord. No. 04-009, § 6-35, 8-26-2004)

Sec. 9-139. Extension of service.

The franchise shall specify extension of service requirements.
(Ord. No. 04-009, § 6-36, 8-26-2004)

Sec. 9-140. Use of streets.

(a) *Underground installations.* All installations shall be underground in those areas of the town where required by a generally applicable, nondiscriminatory town ordinance. While grantees are encouraged to always place plant underground, in areas where either telephone or electric utility facilities are above ground at the time of installation, grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the town or are placed underground, the grantee shall likewise place its services underground without additional cost to the town or to the individual subscriber so served with the town. If the town compensates any other person for relocating or moving its facilities in any way then grantee shall be similarly compensated, in a proportionate manner. Where not otherwise required to be placed underground by this chapter or the franchise, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.

(b) *Permits.* Prior to construction or alteration, however, the grantee shall obtain all required permits.

(c) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

(1) Not endanger or interfere with the health, safety or lives of persons;

(2) Not interfere with any improvements the town, county or state may deem proper to make;

(3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public rights-of-ways, places or property, except to the minimum extent possible during actual construction or repair;

(4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and

(5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the town.

(d) *Restoration to prior condition.* In case of any disturbance of public or private pavement, sidewalk, driveway, lawn, landscape, or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the town and consistent with the franchise, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as reasonably good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the town in the franchise. Unless prevented by circumstances beyond the grantee's control, such restoration shall be completed within no more than ten business days after the damage is incurred.

(e) *Relocation of the facilities.* In the event that at any time during the period of the franchise, the town, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense as detailed in the franchise agreement. If the town compensates any person for relocating or moving its facilities in any way, then grantee shall be similarly compensated, in a proportionate manner.

(f) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 15 working days' advance notice to arrange for such temporary wire changes.

(g) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing town ordinances, to trim any trees upon and overhanging public rights-of-way so as to prevent the branches of such trees from coming in contact with the cable system, except that at the option of the town, such trimming may be done by it, or under its supervision and direction, at the reasonable expense of the grantee.

(h) *Easements.* All necessary easements over and under private property shall be arranged for by the grantee.

(Ord. No. 04-009, § 6-37, 8-26-2004)

Sec. 9-141. Erection, removal and common use of poles.

(a) No poles shall be erected by the grantee without prior approval of the town with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wireholding structure of the grantee shall give rise to a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby.

(b) Where poles already exist for use in serving the town are available for use by grantee, but it does not make arrangements for such use, the town may require grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to grantee are just and reasonable as reasonably determined by grantee.
(Ord. No. 04-009, § 6-38, 8-26-2004)

Sec. 9-142. Construction reporting requirements.

(a) Within 30 days of the granting of an initial franchise pursuant to this chapter, the grantee shall provide the town with a written progress report detailing work completed to date. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the town manager may deem necessary. The content and format of the report will be determined by the town manager and may be modified at his/her discretion. Other reports may be required in the franchise.

(b) Such written progress reports shall be submitted to the town on a quarterly basis throughout the entire construction process. The town manager may require more frequent reporting if he/she determines it is necessary to better monitor the grantee's progress.

(c) Not more than 72 hours and not less than 24 hours prior to the commencement of any system construction, the grantee shall provide door hangers or similar direct notice to all residents of the area to be under construction, which shall describe the activity that will be taking place.
(Ord. No. 04-009, § 6-39, 8-26-2004)

Sec. 9-143. Tests and performance monitoring.

(a) The grantee shall conduct technical tests of the cable system as required by the FCC, and shall provide copies to the town within 60 days of completion of such tests.

(b) Such periodic tests shall be made at the test points as shall be required by the FCC and the franchise.

(c) Whenever there have been multiple, similar complaints made or when there exists other evidence, which, in the judgment of the town, casts doubt on the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze, and report on the performance of its system. The grantee shall reasonably determine the nature and extent of testing required to make an adequate evaluation of system performance. Reports on such tests shall be delivered to the town no later than 14 days after the town formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used, and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be performed by qualified system personnel. Qualified system personnel shall certify all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions should be taken by the grantee. The town shall bear the costs of all special tests unless the tests reveal items of noncompliance with FCC technical standards. If the cause of the problem has not been identified by the tests or resolved, and complaints continue, the grantee shall use its best efforts to resolve the problem in a timely manner.

(d) The town shall have the right to employ qualified consultants if necessary or desirable at the town's expense to assist in the administration of this or any other section of this chapter or the franchise.
(Ord. No. 04-009, § 6-40, 8-26-2004)

Secs. 9-144—9-169. Reserved.

DIVISION 6. SERVICE PROVISIONS

Sec. 9-170. Services to subscribers and users.

(a) Concurrently with the activation of the cable system in the town, the grantee shall provide all services to subscribers as described herein and in the franchise.

(b) The grantee shall provide and maintain service on the basic tier, at a minimum, the following access channel(s) whose purposes are outlined below according to the terms of the franchise:

(1) Government access channel which shall be a specifically designated channel for local noncommercial governmental use and shall be managed, scheduled and programmed exclusively by the town.

(2) Educational channel which shall be a specifically designated channel for noncommercial use by regional public and private school authorities, and shall be managed, scheduled and programmed exclusively by them.

(3) Public access channel, which will be a specifically designated channel available on a first-come, first-served, nondiscriminatory basis for noncommercial use.

(c) The grantee shall fully provide, at a minimum, services, facilities and equipment for public, educational and government access as indicated in the franchise.

(d) Emergency override. The grantee shall comply with the EAS requirements of the FCC.
(Ord. No. 04-009, § 6-41, 8-26-2004)

Sec. 9-171. Installations, connections and other grantee services.

(a) *Standard installations.* Standard installation shall consist of a service not exceeding 125 aerial feet from a single point or pedestal attachment to the customer's residence. Standard installations will be performed within seven business days after an order has been placed. Service in excess of 125 aerial feet and concealed wiring shall be charged for the costs which exceed those of a standard installation. The desire of the subscriber as to the point of entry into the residence shall be observed whenever reasonably possible. Runs in building interiors shall be as unobtrusive as reasonably possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be completed within no more than ten business days after the damage is incurred.

(b) *Deposits.* The grantee shall comply with any state or federal regulations regarding interest on any deposit required by the grantee.

(c) *Antennas and antenna switches.* The grantee shall not, as a condition to providing cable service, require any subscriber or potential subscriber, to remove any existing antenna structures for the receipt of over-the-air television signals. The grantee shall install, upon the request of the subscriber a RF or antenna switch for a reasonable charge or a fee set by the FCC.

(d) *Parental control devices.* The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a parental control device for use by a subscriber. The grantee reserves the right to require a reasonable deposit for the use of this device, as set forth in the rate schedule. The lockout device parental control capability described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.

(e) *Reconnection.* grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed, including any established reconnect fee.

(f) *Free disconnection.* Subscribers shall have the right to have cable service disconnected without charge unless otherwise provided by applicable law. A refund of unused service charges shall be paid to the customer within 45 days from the date of termination of service.

(g) *Delinquent accounts.* grantee shall use its best efforts to collect on delinquent subscriber accounts. At the grantee's option, service will not be disconnected if a delinquent customer agrees at any time to be placed on a regular payment plan to clear the account. In all cases, the grantee shall provide the customer with at least ten business days written notice prior to disconnection.
(Ord. No. 04-009, § 6-42, 8-26-2004)

Sec. 9-172. Service calls and complaint procedures.

Grantee shall maintain a convenient bill payment location in the town for receiving subscriber payments and handling billing questions, which shall be appropriately staffed to handle such tasks. The grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including 47 CFR 76.1602 and any amendments to 47 CFR 76.309 during the term of this franchise, that impose higher or additional customer service standards on a cable operation.

(1) *Cable system office hours and telephone availability:*

a. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week:

1. Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.

2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.

b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made.

If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.

c. Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

d. Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.

e. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) *Outages and service calls.* Under normal operating conditions, each of the following standards will be met no less than 95 percent of the time measured on quarterly basis:

a. Excluding conditions beyond the control of grantee, grantee will begin working on "service interruptions" as follows: (i) on such interruptions affecting less than 12 subscribers promptly and in no event later than 24 hours after the interruption becomes known; and (ii) on such interruptions affecting 12 or more subscribers promptly and in no event later than six hours after the interruption becomes known. grantee must begin actions to correct other service problems the next business day after notification of the service problem.

b. The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four hour time block during normal business hours. Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

c. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

d. If grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) *Communications between grantee and subscribers:*

a. *Refunds*. Refund checks will be issued promptly, but no later than either:

1. The subscriber's next billing cycle following resolution of the request or 30 days, whichever is earlier, or

2. The return of the equipment supplied by grantee if cable service is terminated.

b. *Credits.* Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

(4) *Review by town.* The town may review and monitor unresolved customer complaints.

(Ord. No. 04-009, § 6-43, 8-26-2004)

Sec. 9-173. Continuity of service mandatory.

(a) It shall be the right of all subscribers to receive continuous, uninterrupted service insofar as their financial and other obligations to the grantee are honored.

(b) In the event that the grantee elects to rebuild, modify or sell the system, or the town gives notice of intent to terminate or fails to renew its franchise, the grantee shall cooperate with the town or new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for the services when it no longer operates the system.

(c) Failure to provide continuity. In the event the grantee fails to operate the system for seven consecutive days without prior approval of the town or without just cause, the town may, at its option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the town or a permanent operator is selected. If the town is required to fulfill this obligation for the grantee, the grantee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the grantee's failure to perform.
(Ord. No. 04-009, § 6-44, 8-26-2004)

Sec. 9-174. Protection of subscriber privacy.

Protection of subscriber privacy mandatory. grantee shall at all times protect the privacy of subscribers, as required by applicable federal and state laws and the franchise.
(Ord. No. 04-009, § 6-45, 8-26-2004)

Sec. 9-175. Rights of individuals.

Nondiscrimination required. grantee shall comply at all times with all other applicable federal and state laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.
(Ord. No. 04-009, § 6-46, 8-26-2004)

Secs. 9-176—9-203. Reserved.

DIVISION 7. BOOKS, RECORDS AND REPORTS

Sec. 9-204. Books and records available to the grantor.

(a) The town shall have the right to inspect at any time during normal business hours, pertinent books, records, maps, plans, gross revenues, service complaint logs, performance test results and other like materials of the grantee which relate to the enforcement of the franchise.

(b) grantee shall permit any duly authorized representative of the town to examine any "as built" maps and other records kept or maintained by grantee or under its control concerning the operations, affairs, transactions or property of grantee which are pertinent to the enforcement of the franchise.

(c) If any of such maps or records are not kept in the town, grantee shall, upon request, have the maps or records delivered to the town or grantee's local office for such inspection.
(Ord. No. 04-009, § 6-47, 8-26-2004)

Sec. 9-205. Reports required.

The grantee shall file with the town at the end of the grantee's fiscal year unless otherwise specified:

(1) *Regulatory communications.* Any material filings with the FCC and any technical reports required by the FCC, including but not limited to annual proof of performance tests and results; and any material filings with any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of grantee's system shall be submitted upon request to the town.

(2) *Facilities report.* A report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the town upon request. Such report shall also contain any necessary revisions to the system maps filed with the town. Such maps shall provide detailed drawings of where the cable strand is located within the town.

(3) *Construction reports.* Quarterly construction reports shall be sent to the town until construction of the initial cable system is completed as specified in section 9-140(a) and (b) of this chapter.

(4) *Proof of performance tests.* Proof of performance test results shall be supplied to the town upon request.

(5) *Tests required by town.* Tests required by the town as specified in section 9-143(c) of this chapter shall be submitted within 30 days of notification.

(6) *Change in service.* A report on any change in programming service or channel or other service shall be provided to the town 30 days prior to implementation.

(7) *Proof of bonds, letter of credit and insurance.* grantee shall initially submit to the town any performance bond, letter of credit and certificate of insurance required by this chapter or the franchise and shall also provide written notice of renewal or change in the performance bond, letter of credit or insurance.

(8) *Shareholder report.* If the grantee is a publicly traded company, then grantee shall provide, a copy of its annual shareholder report.

(9) *Financial and ownership reports.* The following financial reports for the franchise area shall be submitted, upon request to the town:

a. An ownership report, indicating all persons, who at any time during the preceding year did control or benefit from an interest in the franchise of ten percent or more.

b. An initial list of the officers and members of the board of directors of grantee and of any parent corporation and notification of any changes.

(10) *Franchise fee report.* A report prepared by a certified public accountant on the grantee's gross revenues, detailed by category and franchise fees for the period July 1 to June 30, shall be provided to the town annually by August 15.

(11) *Operational reports.* An annual report regarding the total number of subscribers, with a breakdown of subscribers for basic and standard tiers if not included in any other reports, and a summary of new services offered, and a summary of complaints received and how they were handled.

(Ord. No. 04-009, § 6-48, 8-26-2004)

Sec. 9-206. Records required.

The grantee shall at all times maintain for inspection a set of plans, records and "as built" maps showing the exact location of all cable system equipment installed or in use in the town, exclusive of subscriber service drops.

(Ord. No. 04-009, § 6-49, 8-26-2004)

Secs. 9-207—9-235. Reserved.

DIVISION 8. MISCELLANEOUS PROVISIONS

Sec. 9-236. Public notice.

Public notice shall be provided as required by state law.

(Ord. No. 04-009, § 6-50, 8-26-2004)

Sec. 9-237. Franchise applications.

(a) Applicants for a franchise or OVS license shall submit to the town a written application utilizing the standard format provided by the town, at the time and place designated by the town for accepting applications. The application shall be complete and shall include all applicable fees.

(b) In awarding a franchise, the town shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area and may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and qualifications to provide cable service.

(c) A fee in the amount of $7,000.00 shall be paid by each applicant at the time of application for an initial franchise which fee shall be in the form of cash, certified check, or money order to defer the cost of studying, investigating, and otherwise processing such application and which shall be in consideration thereof and not refundable or returnable in whole or in part. To offset the effects of inflation, the amount of the fee provided for herein is subject to reasonable increase in accord with the annual rate of inflation per the CPI.

(Ord. No. 04-009, § 6-52, 8-26-2004)

Sec. 9-238. Remedies.

(a) If the town, in its judgment, determines that a grantee has breached or violated any provision of a franchise agreement or ordinance, or this chapter, the town shall give the grantee written notice of the breach or violation. The notice shall inform the grantee of the possible application of the relevant liquidated damages listed in subsection (b) below.

(b) Subject to the provisions of subsection (f) below, the town may impose the following liquidated damages against a grantee for a breach or violation of any provision of a franchise agreement or ordinance, or this chapter:

(1) Failure to restore damaged property to better or original condition, $500.00 per day plus cost of restoration if not completed within ten business days from receipt of notice from the town.

(2) Failure to bury drops or other cables as required in section 9-137(h) of this chapter, $500.00 per day from two business days after the date of notice by the town.

(3) Failure to complete system construction or conversion as outlined in the franchise, $250.00 per day, up to $5,000.00 per month.

(4) Failure to complete all plant extensions as required by this franchise, $100.00 per day beginning two business days from receipt of notice from the town.

(5) Failure to resolve multiple similar unresolved customer complaints, unless beyond the franchisee's control, $500.00 per day in the aggregate beginning two business days from receipt of notice from the town.

(6) Failure to remove or relocate affected cable system before construction begins due to change in street grade or lines or water/wastewater/storm water lines, $500.00 per day beginning two business days from receipt of notice from the town.

(7) Failure to comply with the material provisions of this chapter, franchise, or applicable state or federal law, $500.00 per day beginning two business days from receipt of notice from the town.

(c) Such liquidated damages may be chargeable against grantee's performance bond or letter of credit.

(d) The town retains the right to reduce or waive any of the above-listed liquidated damages.

(e) The imposition of any liquidated damages shall be in addition to and not a limitation upon the other penal provisions of the Town Code of Ordinances or other applicable law, including revocation of a franchise pursuant to this chapter, or other statutorily or judicially imposed penalties. No decision by the town to invoke any remedy under the franchise, this chapter, or any statute, law or ordinance shall preclude the availability of any other such remedy.

(f) Any grantee who receives notice of violation of a provision of this chapter or franchise or that liquidated damages may be imposed for failure to remedy a breach or violation by the relevant time frame set forth in subsection (b) above may, within ten days of receipt of such notice, appeal the notice of violation or decision to impose liquidated damages to the town council. No action to collect

any liquidated damages, including charging them against a performance bond or letter of credit, shall be commenced during that ten day period. The appeal must be made in writing to the town attorney, and must state the grounds upon which grantee believes there was no material breach or violation, and that liquidated damages should not be imposed. The town council will hear and make the final administrative determination on any such appeal. If an appeal is timely filed, no action to collect any liquidated damages, including charging them to a performance bond or letter of credit, will be taken until the town council has ruled on the merits of the appeal and grantee has failed to appeal or take other legal action regarding the liquidated damages before a court of competent jurisdiction, which grantee must do within 60 days of the town council's decision.
(Ord. No. 04-009, § 6-53, 8-26-2004)

Chapter 10

CEMETERIES*

Article I. In General

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Sec. 10-3. Offensive substances.
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Article IV. Old Section

Sec. 10-96. Generally.
Sec. 10-97. Regulations.

***State law references—** Cemeteries generally, G.S. Ch. 65; municipal cemeteries, Article 17 of G.S. 160A and Article 19, Part 3C, of G.S. Ch. 160A

ARTICLE I. IN GENERAL

Sec. 10-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cemetery shall mean Hillcrest Cemetery.

Landmark designation shall mean an individual building, structure, site, or object that has historical, architectural, archeological, or cultural significance and integrity and has been recognized by official designation for its importance.

New section shall mean that part or section of Hillcrest Cemetery, consisting of sections J and K, which the town of Cary acquired in the year 1977, by deed recorded in Book 2509, at page 507, of the Wake County, North Carolina, Registry, on June 6, 1977.

Old section shall mean all those parts or sections of Hillcrest Cemetery, consisting of sections A through I and sections L through N which the Town of Cary owns in fee simple, other than the new section as defined above.

Person shall mean any individual, corporation, limited liability company, partnership or other legal entity.
(Code 1982, § 7-2; Ord. No. 80-4, § 6.1-3(a)(1—5), 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-2. Purpose.

This chapter is adopted for the purpose of operating, maintaining, regulating and controlling the Hillcrest Cemetery, which is owned by the town. The "new section," as defined in section 10-1, shall be regulated by this chapter, and the "old section," as defined in section 10-1, shall continue to be operated and maintained as described herein.

Hillcrest Cemetery has received a landmark designation and is recognized as an important historic resource worthy of preservation. Any substantial design changes to the cemetery's structural and landscape elements, including but not limited to grave markers, entrance markers, fences, gates, roads, walkways, green space and trees, may not be altered, restored, moved, remodeled, or reconstructed so that a change in design, material, or outer appearance occurs unless and until a certificate of appropriateness is obtained from the Town of Cary Historic Preservation Commission or its successors.
(Code 1982, § 7-3; Ord. No. 80-4, § 6.1-2, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014; Ord. No. 2015-Code-005, 10-22-2015)

Sec. 10-3. Offensive substances.

No person shall deposit, or cause to be deposited, any trash, filth or unclean or offensive substance in the cemetery, including but not limited to bottles, cans, garbage, glass, plaster, nails, paint, oil, human or animal waste, as well as any other substance which may be or could become offensive, annoying, unaesthetic or toxic and possibly injurious to health in any way.
(Code 1982, § 7-5; Ord. No. 80-4, § 6.1-27, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-4. Conduct of persons within the cemetery.

(a) All persons when within the cemetery are reminded that the grounds thereof are sacredly dedicated to the interment and repose of the dead and respectful observance of the decorum is expected and required.

(b) No person shall take any animal into, or permit any animal to enter, a town-owned cemetery, unless that animal is a service animal individually trained to provide assistance to an individual with a disability.

(c) No person shall drive any vehicle on or over any plot lot or walkway within the cemetery.

(d) No person shall use the cemetery as a playground or parking place, make loud noises of any kind, discharge any firearms (provided that firearms may be discharged in case of military funerals and Memorial Day exercises), or remain within or enter the cemetery after sundown without first having secured permission from the public works director or designee. Persons using the cemetery shall comply with Town of Cary Code of Ordinances, Ch. 22, Article IV, Offenses Involving Public Peace and Order.

(e) All persons, including those providing services within the boundaries of the cemetery shall comply with this ordinance.
(Code 1982, §§ 7-6, 7-8; Ord. No. 80-4, §§ 6.1-22, 6.1-25, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-5. Speed of vehicles.

No person shall drive a motor vehicle in any town-owned cemetery in excess of 15 miles per hour.
(Code 1982, § 7-7; Ord. No. 80-4, § 6.1-24, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-6. Plantings and floral arrangements.

(a) No person shall plant or maintain any tree, flower, shrub or ground cover or sow seed of any kind in the town cemetery.

(b) The town reserves the right to trim, prune, exclude or remove from any lot any tree, planting, plant, flowers, floral arrangements or shrubbery that is unsightly or detrimental by reason of roots, branches or otherwise to adjacent walks, roads, or renders access to any grave lot inconvenient, or that detracts from the general appearance of the cemetery.

(c) All cut flowers shall be removed when they become wilted, impaired, or unsightly. If flowers are not removed by the owners, then they may be removed by the public works director or designee. Any containers left at the graveside after the flowers have served their usefulness may be removed by the public works director or designee.
(Code 1982, §§ 7-9, 7-10; Ord. No. 80-4, §§ 6.1-20, 6.1-23, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-7. Closing hours.

The town cemetery shall be closed from 8:00 p.m. until 8:00 a.m. from April 1 through August 31 and from 6:00 p.m. until 8:00 a.m. from September 1 through March 31. No person shall enter the cemetery while it is closed without the permission of the public works director or designee.
(Code 1982, § 7-11; Ord. No. 80-4, § 6.1-21, 1-24-1980; Ord. No. 94-012, § 1, 5-12-1994; Ord. No. 2014-Code-02, 1-30-2014)

Secs. 10-8—10-36. Reserved.

ARTICLE II. SALE OF BURIAL EASEMENTS

Sec. 10-37. Procedure for purchase of burial easements.

(a) *Intent.* The town intends to make cemetery lots available to all persons on an equal basis. In order to accomplish this, restrictions must be placed on the re-sale of burial easements to discourage the purchasing of burial easements with the primary intent of reselling them for a profit.

(b) *Number of lots.* No person shall be allowed to purchase from the town more than six burial easements in the new section.

(c) Owners of burial easements in the cemetery are granted an easement for burial purposes. This easement is subject to the rules and regulations of the town.

(d) *Sale by town.* Upon payment by the purchaser of the full purchase price and registration fee, the town clerk shall cause the easement deed to be executed by the town, registered in the office of the county register of deeds, provide a copy to the purchaser, and maintain the record copy.

(e) *Reconveyance by purchaser.* In order to properly manage the new sections of the cemetery, the town must know, at all times, the identity of the legal owner of each burial easement. The public records of the county registry shall be used for that purpose. If the legal owner of a burial easement wishes to sell the easement, after conveyance from the town, both the owner and the purchaser must work with the town clerk to register the conveying instrument in the office of the county register of deeds.
(Code 1982, § 7-23; Ord. No. 80-4, § 6.1-7, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014; Ord. No. 2019-Code-03, 9-26-2019)

Sec. 10-38. Price of burial easements.

(a) The price of burial easements in the new sections shall be determined by the town council and made a part of the fee schedule in the budget document. In addition to the purchase price, the town shall collect a fee for the registration of the deed with the county register of deeds. The registration fee collected shall be in accordance with the county register of deeds fee schedule.

(b) Upon request of the easement owner, and approved by the town council, the town will repurchase easements sold in the new sections for the amount set forth in the town fee schedule.
(Code 1982, § 7-24; Ord. No. 80-4, § 6.1-6, 1-24-1980; Ord. No. 82-14, § 1, 9-23-1982; Ord. No. 2014-Code-02, 1-30-2014)

Secs. 10-39—10-66. Reserved.

ARTICLE III. INTERMENTS

Sec. 10-67. Restrictions.

(a) *Generally.* All interments in lots shall be restricted to members of the family, relatives of the owners, or such other persons as the easement owner may choose to admit. Prior to interment, the owner or his authorized representative shall authorize such burial by executing an authorization-for-burial form obtained from the town clerk.

(b) All interments and disinterments shall be in accordance with Wake County Health Department regulations and North Carolina General Statutes.

(c) The usage of each lot shall be limited to one of the following:

(1) The interment of one human body; or

(2) The interment of one human body and one cremation urn with human remains; or

(3) The interment of one or two cremation urns with human remains.
(Code 1982, § 7-37; Ord. No. 80-4, § 6.1-10, 1-24-1980; Ord. No. 83-16, § 1, 10-13-1983; Ord. No. 2010-Code-02, 3-10-2010; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-68. Opening and closing of graves.

The town shall not be responsible for the opening or closing of graves for any purpose, and the town shall not assume any financial responsibility for the opening or closing of graves.
(Code 1982, § 7-38; Ord. No. 80-4, § 6.1-11, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-69. Hours of interment.

Burial services shall be scheduled generally between 8:00 a.m. and 5:00 p.m.
(Code 1982, § 7-39; Ord. No. 80-4, § 6.1-12, 1-24-1980)

Sec. 10-70. Grave specifications.

The width of graves in the cemetery shall be at least three inches greater than the box width on each side. A minimum of 18 inches of soil shall be placed over the liner and all graves shall be made approximately level with the lot.
(Code 1982, § 7-40; Ord. No. 80-4, § 6.1-13, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-71. Grave liners.

Concrete, steel or fiberglass grave liners shall be used for all burials in the cemetery. This requirement may not be waived in any situation.
(Code 1982, § 7-41; Ord. No. 80-4, § 6.1-14, 1-24-1980; Ord. No. 2015-Code-003, 7-9-2015)

Sec. 10-72. Marking new grave sites.

(a) A temporary marker shall be placed at the gravesite at time of interment. A permanent marker is required within 12 months of burial. Should the temporary marker become broken or deteriorated before the installation of the permanent marker, the town may remove the temporary marker at any time.

(b) Monuments, footstones or other appropriate grave markings shall have mowing borders around the base of at least three inches and shall not exceed the grave width or encroach on the grave of other owners.

(c) All monuments, headstones and footstones shall be erected under the supervision of the public works director or designee. All persons shall clean the work site of all unused materials or debris upon completion. If unused material or debris is left at the work site, the public works director or designee will notify the responsible party and request that corrective action be taken. If a monument is incorrectly set, it shall be removed or reset at the cost of the owner.

No monuments or markers shall be set without first notifying the public works director or designee.
(Code 1982, § 7-42; Ord. No. 80-4, § 6.1-15, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014; Ord. No. 2015-Code-003, 7-9-2015)

Sec. 10-73. Vaults, tombs or mausoleums above ground.

No new vaults, tombs or mausoleums above the ground shall be permitted in the cemetery.
(Code 1982, § 7-43; Ord. No. 80-4, § 6.1-16, 1-24-1980; Ord. No. 2015-Code-003, 7-9-2015)

Sec. 10-74. Stones, plantings or obstacles.

(a) No person shall place or cause to be placed on any lot in the cemetery any stone, planting or obstacle, other than markers, monuments, headstones or footstones as described in section 10-72. Placing masonry or brick wall or other enclosure around a lot or lots or around a grave, shall not be permitted.

(b) These requirements shall apply to the designated new sections and the old section of the cemetery. The town shall not be responsible for maintenance of existing masonry or brick wall or other enclosures.
(Code 1982, § 7-44; Ord. No. 80-4, § 6.1-17, 1-24-1980; Ord. No. 89-31, § 1, 3-9-1989; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-75. Tents and other private property.

Funeral homes shall erect tents for funerals. Funeral homes must remove these tents within seven days after the funeral. The town assumes no responsibility for any private equipment due to damage from wind, rain, snow, fire or other causes.
(Code 1982, § 7-45; Ord. No. 80-4, § 6.1-18, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-76. Record of interments and removals.

The town clerk shall keep a complete record of all interments and removals from the town cemetery. The record shall include the section of the cemetery, the lot number, size and location of graves on the lot, the name of the deceased and the date of such action.
(Code 1982, § 7-46; Ord. No. 80-4, § 6.1-19, 1-24-1980)

Sec. 10-77. Cemetery maintenance.

(a) Funeral homes are responsible for gravesite maintenance during the first six months after burial. Within those six months, if a grave space sinks below surrounding ground, becomes eroded or otherwise becomes a problem due to lack of proper restoration or stabilization, the public works director or designee shall notify the funeral director and request that corrective action be taken within ten days.

(b) The easement owner is responsible for maintaining any monument, headstone or footstone. A certificate of appropriateness must be obtained from the Wake County Historic Preservation Commission or its successors, if it is determined that the monument, headstone or footstone needs to be in any way altered, restored, moved, remodeled, or reconstructed so that a change in design, material, or outer appearance occurs.

(c) Only the Town or its designee shall perform mowing, sodding and seasonal maintenance. As part of maintenance, crews shall collect and dispose of all non-permanent items, including wilted flowers, faded and worn artificial flowers and flags, and empty containers. The town shall also trim, prune and remove any existing vegetation or ground coverings in conflict with the cemetery ordinance.
(Ord. No. 2014-Code-02, 1-30-2014)

Secs. 10-78—10-95. Reserved.

ARTICLE IV. OLD SECTION

Sec. 10-96. Generally.

The old section shall be subject to all the provisions of this chapter which are not in conflict with the regulations provided in section 10-97.
(Code 1982, § 7-58; Ord. No. 80-4, § 6.1-5, 1-24-1980)

Sec. 10-97. Regulations.

The following regulations shall apply only to the old section of Hillcrest Cemetery:

(1) Upon the dissolution of Hillcrest Cemetery, a nonprofit corporation, the town accepted the old section for maintenance only, but with the specific understanding that the town shall not become involved in the development and sale of lots in the old section of cemetery property.

(2) The town shall make available to any interested citizen those maps and records delivered to the town by Hillcrest Cemetery association, but shall not in any way guarantee the accuracy of said maps and records.

(3) The town shall assume no responsibility for determining the location of family graves, lots or plots or the opening or closing of grave sites used by persons owning or claiming ownership of graves, lots or plots.

(4) The town shall make available all materials and records delivered to the town by Hillcrest Cemetery association, but shall take no position in a determination of the accuracy of such records or possible conflicts between different individuals or families claiming ownership or rights.

(Code 1982, § 7-59; Ord. No. 80-4, § 6.1-4, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Chapter 11

RESERVED

Chapter 12

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES*

Article I. In General

Secs. 12-1—12-20. Reserved.

Article II. Emergency Management Agency

Sec. 12-21. Purpose.
Sec. 12-22. Definitions.
Sec. 12-23. Agency designated.
Sec. 12-24. Director.
Sec. 12-25. Emergency operations plan.
Sec. 12-26. Emergency control.
Sec. 12-27. Mutual aid agreements.
Sec. 12-28. Volunteers.
Sec. 12-29. Coordination of emergency response.
Secs. 12-30—12-46. Reserved.

Article III. States of Emergency

Sec. 12-47. Declaration.
Sec. 12-48. Reserved.
Sec. 12-49. Prohibitions and restrictions during emergency.
Sec. 12-50. When prohibitions and restrictions take effect.
Sec. 12-51. Subsequent declaration.
Sec. 12-52. Violations.
Sec. 12-53. Absence or disability of mayor.
Sec. 12-54. End of state of emergency.

***State law references—**Emergency management, G.S. Ch. 166A; ordinances on states of emergency, G.S.14-288.12.

ARTICLE I. IN GENERAL

Secs. 12-1—12-20. Reserved.

ARTICLE II. EMERGENCY MANAGEMENT AGENCY

Sec. 12-21. Purpose.

In coordination with Wake and Chatham counties, the town has the primary role of planning for and managing all aspects of the town's recovery from emergencies. This ordinance is designed to establish an Emergency Management Agency within the town as authorized by G.S. Chapter 166A to plan for emergencies and ensure coordination with Chatham and Wake Counties to ensure the prompt and efficient utilization of town resources in the event of an emergency.
(Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-22. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency: An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, terrorism, weather-related, public health, explosion-related, riot-related cause, or technological failure or accident, including, but not limited to, a pandemic, epidemic, cyber incident, an explosion, a transportation accident, a radiological accident, or a chemical or other hazardous material incident.

Emergency management: Those measures taken by the populace and governments at federal, state, and local levels to minimize the adverse effect of any type emergency, which include the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.

Emergency Management Agency: The public safety division of the town which, among other duties, is charged with coordination of all emergency management activities for the town.
(Code 1976, § 7-1; Code 1982, § 8-1; Ord. No. 2010-Code-06, 7-15-2010; Ord. No. 2020-Code-01, 4-30-2020)

State law reference—Similar provisions, G.S. 166A-4.

Sec. 12-23. Agency designated.

The Public Safety division, and any successor division, is hereby designated as the town's emergency management agency as authorized by G.S. 166A-19.15 and is charged with coordinating all emergency management activities for the town. The Public Safety division shall coordinate with Chatham County for those parts of the town within Chatham County and with Wake County for those parts of the town within Wake County.
(Code 1976, § 7-2; Code 1982, § 8-2; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-24. Director.

The Public Safety Director shall serve as the Director of Emergency Management and shall designate an individual or individuals who, with the consent of the Town Manager, shall serve as the Director in the absence or disability of the Public Safety Director. The Director shall have direct responsibility for the organization, administration, and operation of the Emergency Management Agency, subject to the supervision, direction, and control of the Town Manager and the provisions of this Chapter 12.
(Code 1976, § 7-3; Code 1982, § 8-5; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-25. Emergency operations plan.

The Director shall implement the town's emergency operations plan, to include appointment of Section Chiefs and other Emergency Operations Center staff.
(Code 1976, § 7-4; Code 1982, § 8-6; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-26. Emergency control.

The Director may establish an Emergency Operations Center (EOC) which may be one or more physical centers or may be virtual, and emergency plans in accordance with the plans of the county, state, or federal emergency management agencies.
(Code 1976, § 7-6; Code 1982, § 8-7; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-27. Mutual aid agreements.

The Director may, in collaboration with other public and private agencies, develop mutual aid agreements, subject to formal or specific approval by the Town Council when required by law, for reciprocal emergency management aid and assistance in case of emergencies; provided that such agreements shall be consistent with the state emergency program and plans.
(Code 1976, § 7-7; Code 1982, § 8-8; Ord. No. 2020-Code-01, 4-30-2020)

State law reference—Mutual aid agreements, G.S. 166A-10.

Sec. 12-28. Volunteers.

The Director may call volunteers into service only in case of emergency or for necessary training and preparation for emergencies. All volunteers shall serve without compensation and shall be subject to all rules and regulations established for volunteers. They may be dismissed or removed by the Director with or without cause.
(Code 1976, § 7-8; Code 1982, § 8-9; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-29. Coordination of emergency response.

The Director shall properly coordinate the activities of the Emergency Management Agency with other federal, state, or local emergency management agencies participating in the town's emergency management response or cooperating in any such emergency.
(Code 1976, § 7-5; Code 1982, § 8-10; Ord. No. 2020-Code-01, 4-30-2020)

Secs. 12-30—12-46. Reserved.

ARTICLE III. STATES OF EMERGENCY

Sec. 12-47. Declaration.

The Mayor is hereby authorized and empowered to declare a state of emergency ("SOE Declaration") if he/she finds that an emergency exists. The emergency area shall include the entire area over which the town has jurisdiction to enforce ordinance-making powers, unless the SOE Declaration provides otherwise.
(Code 1976, §§ 10-7, 10-9; Code 1982, § 8-22; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-48. [Reserved.]

Sec. 12-49. Prohibitions and restrictions during emergency.

(a) During the existence of a declared state of emergency, the Mayor may impose by declaration prohibitions and restrictions ("Prohibitions and Restrictions Declaration"):

(1) If movements of people in public places, including any of the following:

a. Imposing a curfew. Unless otherwise specified in the declaration, the curfew shall apply during the specified period each day until the Mayor, by additional declaration, removes the curfew.

b. Directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the town's jurisdiction.

c. Prescribing routes, modes of transportation, and destinations in connection with evacuation.

d. Controlling ingress and egress of an emergency area, and the movement of persons within that area.

e. Providing for the closure, within the emergency area, of streets, roads, highways, bridges, public vehicular areas, or other areas ordinarily used for vehicular travel, except to the movement of emergency responders and other persons necessary for recovery from the emergency. In addition to any other notice or dissemination of information, notification of any closure of a road or public vehicular area under the authority of this subsection shall be given to the Department of Transportation as soon as practicable.

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages.

(4) Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this chapter does not authorize

prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subsection, the term “dangerous weapons and substances” has the same meaning as it does under G.S. 14-288.1 and the term “firearm” has the same meaning as it does under G.S. 14-409.39(2).

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

(b) The SOE Declaration and any Prohibitions and Restrictions Declaration may be combined in one declaration or may be separate declarations.

(c) The Mayor shall not be required to impose all types of the above prohibitions or restrictions, or any particular prohibition or restriction, during a state of emergency and may determine and impose only the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency. By way of example and not limitation, the Prohibitions and Restrictions Declaration may limit the application of all or any part of prohibitions or restrictions authorized by this article to any area specifically designated or described within the Declaration and to specific hours of the day or night; and to exempt from all or any part of such declaration law enforcement officers, Fire Department and other public employees; doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting, and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the town.
(Code 1976, § 10-10; Code 1982, § 8-24; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-50. When prohibitions and restrictions take effect.

The prohibitions and restrictions imposed by a Prohibitions and Restrictions Declaration shall take effect in the emergency area immediately upon publication of the Prohibitions and Restrictions Declaration unless the Declaration sets a later time. Publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly, including publication on the town’s website. As soon as practicable, however, the Mayor shall make appropriate distribution of the full text of any Prohibitions and Restrictions Declaration and the town shall be prepared to furnish certified copes of it upon request.
(Code 1976, § 10-11; Code 1982, § 8-25; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-51. Subsequent declaration.

Any SOE Declaration or Prohibitions and Restrictions Declaration may be extended, altered, or repealed during the continued or threatened existence of a state of emergency by the Mayor’s issuance of a subsequent declaration.
(Code 1976, § 10-12; Code 1982, § 8-26; Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-52. Violation.

During the existence of a declared state of emergency, it shall be unlawful for any person to violate any provision of any Declaration authorized by this article. Any person who violates any provision of a Declaration made pursuant to this article shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.
(Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-53. Absence or disability of Mayor.

In case of the absence or disability of the Mayor, the Mayor Pro-tem shall have and exercise all powers given the Mayor by this article. In case of the absence or disability of both the Mayor and the Mayor Pro-tem, the Town Manager shall have and exercise all of the powers given the Mayor by this article.
(Ord. No. 2020-Code-01, 4-30-2020)

Sec. 12-54. End of state of emergency.

The Mayor shall declare the end of such state of emergency or all or any part of the prohibitions and restrictions imposed as soon as circumstances warrant or when directed to do so by the Town Council.
(Ord. No. 2020-Code-01, 4-30-2020)

State law references—G.S. Chapter 166A, 14-288.1, 14-409.39(2), 14-288.20A.

Chapter 13

RESERVED

Chapter 14

ENVIRONMENT

Article I. In General

Secs. 14-1—14-18. Reserved.

Article II. Drainage

Sec. 14-19. Drainage nuisances; abatement.

Article III. Smoking Prohibited in Town Facilities

Sec. 14-20. Purpose.
Sec. 14-21. Definitions.
Sec. 14-22. Smoking prohibited in town facilities.
Sec. 14-23. Signs.

ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

ARTICLE II. DRAINAGE

Sec. 14-19. Drainage nuisances; abatement.

Any surface or roof drainage which creates a structural or health hazard or any other nuisance to the owners or occupants of adjacent premises, or to the public by reason of discharge into, onto or across any adjacent building, premises or public thoroughfare shall be abated by the owners of the improperly drained area.
(Code 1976, § 15-60; Code 1982, § 5-98)

ARTICLE III. SMOKING PROHIBITED IN TOWN FACILITIES

Sec. 14-20. Purpose.

Pursuant to authority granted by the North Carolina General Assembly, it is the intent of this section to protect the health and well being of individuals working in or visiting Town of Cary facilities from the risks related to secondhand smoke.
(Ord. No. 2007-13, 10-11-2007, eff. 1-1-2008)

Sec. 14-21. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Smoking means the use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

Town facilities means any building owned by the Town of Cary, leased by the Town as lessor, or any area leased as lessee and occupied by the Town of Cary or any public transportation vehicle owned or leased by the Town. Town facilities include, but are not limited to, Town Hall, other Town buildings, police and fire stations, Town community centers, and C-Tran vehicles.
(Ord. No. 2007-13, 10-11-2007, eff. 1-1-2008)

Sec. 14-22. Smoking prohibited in town facilities.

Smoking is prohibited in all Town facilities.
(Ord. No. 2007-13, 10-11-2007, eff. 1-1-2008)

Sec. 14-23. Signs.

Signs indicating that smoking is not permitted shall be posted at every Town facility to give adequate notice to members of the public.
(Ord. No. 2007-13, 10-11-2007, eff. 1-1-2008)

ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

ARTICLE II. DRAINAGE

Sec. 14-19. Drainage nuisances; abatement.

Any surface or roof drainage which creates a structural or health hazard or any other nuisance to the owners or occupants of adjacent premises, or to the public by reason of discharge into, onto or across any adjacent building, premises or public thoroughfare shall be abated by the owners of the improperly drained area.
(Code 1976, § 15-60; Code 1982, § 5-98)

Chapter 15

RESERVED

Chapter 16

FIRE PREVENTION AND PROTECTION*

Article I. In General

Sec. 16-1. Statewide fire code.
Sec. 16-2. Regulation of open burning.
Sec. 16-3. Combustible landscaping material prohibited.
Secs. 16-4—16-18. Reserved.

Article II. Fire Department

Sec. 16-19. Established.
Sec. 16-20. Appointment of officers.
Sec. 16-21. Duties of fire chief.
Sec. 16-22. Police powers.
Sec. 16-23. Apparatus, equipment and supplies.
Secs. 16-24—16-53. Reserved.

Article III. Hazardous Material Emergencies

Division 1. Generally

Sec. 16-54. Purpose and intent.
Sec. 16-55. Charges.
Secs. 16-56—16-83. Reserved.

Division 2. Data Storage Boxes

Sec. 16-84. Purpose.
Sec. 16-85. Required.
Sec. 16-86. Contents, types, location.
Sec. 16-87. Violation; enforcement.

***State law references—**Fire protection, G.S. Ch. 69; municipal fire protection, G.S. § 160A-291 et seq.; fire limits, G.S. § 160A-435 et seq.

ARTICLE I. IN GENERAL

Sec. 16-1. Statewide fire code.

The North Carolina Fire Prevention Code as adopted by the North Carolina Building Code Council and as amended in the future, is hereby adopted and legally enforceable in the corporate limits and extraterritorial jurisdiction of the town.
(Code 1982, § 9-40; Ord. No. 00-008, § 1, 4-13-2000; Ord. No. 2010-Code-03, 5-13-2010)

Sec. 16-2. Regulation of open burning.

(a) *Purpose.* The purpose of this section is to regulate certain open burning in order to protect the public from the hazards of fires and air pollution.

(b) *Scope.* This regulation shall apply to all operations involving open burning except those specifically exempted by this section.

(c) *No open burning allowed.* No person shall cause, suffer, allow or permit open burning of refuse or other combustible material except as may be allowed in compliance with this section. Furthermore, the town of Cary burning permit must remain on the premises during the hours of burning.

(d) *Permissible open burning with required permit.* While recognizing that open burning contributes to air pollution, certain types of open burning may reasonably be allowed in the public interest. The authority to conduct open burning under the provision of this section does not exempt or excuse a person from the consequences, damages or injuries which may result from such conduct nor does it excuse or exempt any person from complying with all applicable laws, ordinances, regulations, and orders of other governmental entities having jurisdiction even though the open burning is conducted in compliance with this section. The following types of burning are permissible with a town of Cary burning permit:

(1) Fires purposely set to agricultural lands for disease and pest control and other accepted agricultural or wildlife management practices.

(2) Fires purposely set to forest lands for accepted forest management practices.

(3) Fires purposely set in rural areas for rights-of-way maintenance.

(4) Camp fires and fires used solely for outdoor cooking and other recreational purposes or for ceremonial occasions or human warmth and comfort. These fires shall be confined to containers approved by the town of Cary fire department.

(5) The burning of waste materials, trees, brush and other vegetable matter in connection with construction projects and the clearing of land or rights-of-way and with the following limitations:

a. Prevailing winds at the time of burning must be away from any city or town or built-up area, the ambient air of which may be significantly affected by smoke, fly-ash, or other air contaminants from the burning;

b. The location of the burning must be at least 1,000 feet from any dwelling located in a predominantly residential area other than a dwelling or structure located on the property on which the burning is conducted;

c. The amount of dirt on the material being burned must be minimized;

d. Heavy oils, asphaltic materials, items containing natural or synthetic rubber or any materials other than plant growth may not be burned;

e. Initial burning may generally be commenced only between the hours of 9:00 a.m. and 3:00 p.m., and no combustible material may be added to the fire between 3:00 p.m. of one day and 9:00 a.m. of the following day, except that under favorable meteorological conditions deviation from the above-stated hours of burning may be granted by the air pollution control agency having jurisdiction. It shall be the responsibility of the owner or operator of the open burning operation to obtain written approval for burning during periods other than those specified above. At no time during the burning operation shall the permittee fail to have the fire tended or guarded.

(6) Motor vehicle salvage operations may be continued subject to the following limitations:

a. Permission to burn must be granted in writing by the state department of natural resources and community development;

b. No automobile tires shall be burned or used in starting a fire.

(7) Open burning of leaves, tree branches or yard trimmings originating on the premises of private residences and burned on those premises in areas where no public pickup facilities are available, and such burning is done between 9:00 a.m. and 3:00 p.m. and does not create a nuisance.

(8) Permits or permissions granted by the town under this section shall be subject to continued review and may be withdrawn at any time.

(Code 1976, § 8-26; Code 1982, § 9-47; Ord. No. 86-19, § 3, 5-8-1986)

Sec. 16-3. Combustible landscaping material prohibited.

No pine straw or any other landscape cover material with a fire rate of spread more than 24 inches per minute shall be placed, kept, or stored within 10 feet of buildings with combustible exterior construction including, but not limited to, vinyl, aluminum, masonite, or wood siding.

(a) *Exception:* Detached single family residential structures not utilized as an "R-4 Home Daycare" or "R-4 Residential Care Home" as defined in the North Carolina Building Code.

(b) *Civil penalties:* Violations not abated within seven days of a written notice shall constitute a $250.00 per day fine.
(Ord. No. 2010-Code-03, 5-13-2010)

Secs. 16-4—16-18. Reserved.

ARTICLE II. FIRE DEPARTMENT

Sec. 16-19. Established.

The fire department of the town is hereby established. It shall consist of a chief and such other officers as the town council may deem necessary for the effective operation of the department.
(Code 1976, § 8-1; Code 1982, § 9-16)

Sec. 16-20. Appointment of officers.

(a) The chief and all other officers shall be appointed by the town manager for an indefinite period, and their tenure of office shall depend upon good conduct and efficiency.

(b) The chief shall be held accountable to the town manager and shall make written and verbal reports thereto as the manager may require. All other officers shall be accountable to the chief.
(Code 1976, § 8-2; Code 1982, § 9-17)

Sec. 16-21. Duties of fire chief.

(a) The fire chief shall formulate a set of rules and regulations to govern the fire department and shall be responsible to the town manager for the personnel, morale and general efficiency of the department.

(b) The chief shall determine the number and kind of companies of which the department is to be composed and shall determine the response of such companies to alarms.

(c) The chief shall cause to be conducted a continuing program of training, including suitable drills and instruction in the operation and handling of equipment, first aid and rescue work, salvage, a study of buildings in the town, fire prevention, water supplies and all other matters generally considered essential to good firemanship and safety of life and property from fire.

(d) The chief shall see that complete records are kept of all fires, inspections, apparatus and minor equipment, personnel and other information about the work of the department.
(Code 1976, § 8-4; Code 1982, § 9-19)

Sec. 16-22. Police powers.

(a) All regularly appointed members of the fire department are hereby given the necessary special police powers for the purpose of enforcing the provisions of this chapter.

(b) It is hereby made the special duty of the chief of police and/or other peace officers who may be on duty and available for fire duty, to respond to all fire alarms and assist the fire department in the protection of life and property, regulating traffic, maintaining order and in enforcing observance of all sections of this chapter.
(Code 1976, § 8-8; Code 1982, § 9-21)

Sec. 16-23. Apparatus, equipment and supplies.

No person shall enter any place where fire apparatus is housed or handle any apparatus or equipment belonging to the department unless accompanied by, or having the special permission of, an officer or authorized member of the department.
(Code 1976, § 8-9; Code 1982, § 9-22)

Secs. 16-24—16-53. Reserved.

ARTICLE III. HAZARDOUS MATERIAL EMERGENCIES

DIVISION 1. GENERALLY

Sec. 16-54. Purpose and intent.

The duties of the fire department shall include controlling and eliminating hazardous waste emergencies as provided in this article. The fire department shall have the authority to summarily remove, abate or remedy hazardous material emergencies in the town limits, or within one mile thereof, that are dangerous or prejudicial to the public health or public safety. The expense of the action shall be paid by the person in default.
(Code 1982, § 9-62; Ord. No. 88-7, § 1, 4-14-1988)

Sec. 16-55. Charges.

(a) The town will not charge for removal, abatement or remedy of hazardous waste material emergencies which accrue $500.00 or less in charges.

(b) The town will charge for removal, abatement or remedy of hazardous waste material emergencies which accrue more than $500.00 in charges. In all cases, the first $500.00 of expenses shall not be charged to the person in default.

(c) The charges for removal, abatement or remedy of hazardous waste material emergencies, as defined in this article, shall be prescribed annually in the town's budget for the fiscal year.
(Code 1982, § 9-63; Ord. No. 88-7, § 1, 4-14-1988)

Secs. 16-56—16-83. Reserved.

DIVISION 2. DATA STORAGE BOXES

Sec. 16-84. Purpose.

The town is empowered and required under G.S. 166A-7 to provide for management of local emergencies. Federal super fund regulations and state right-to-know laws provide special reporting and handling requirements for businesses that generate or store substantial quantities of hazardous substances. Emergencies such as fires, spills and explosions involving hazardous substances present a particularly grave threat to the health of the environment and the citizens of the county, as well as to workers responding to the emergency. Access to current information concerning the type, amount and location of hazardous substances during such an emergency is necessary to adequately protect human life and the environment.
(Code 1982, § 9-70; Ord. No. 92-30, § 1, 4-9-1992; Ord. No. 2010-Code-02, 3-10-2010)

Sec. 16-85. Required.

All commercial enterprises or industries in the town which use, store or manufacture hazardous materials that must be reported under the Hazardous Chemicals Right to Know Act (G.S. 95-173 et seq.) or under Title III of the Federal Super Fund Amendments and Reauthorization Act and the regulations promulgated thereunder must have an approved on-site hazardous materials data storage box(es) at each facility where hazardous materials may be found.
(Code 1982, § 9-71; Ord. No. 92-30, § 1, 4-9-1992)

Sec. 16-86. Contents, types, location.

(a) The data storage boxes may contain keys providing access to secured portions of the facility. The boxes shall contain current specific information to assist fire department and hazardous materials teams responding to emergencies at the facility. The boxes shall include, but not be limited to, facility maps or plans showing the type and location of hazardous materials, Tier II forms, material safety data sheets, lists of chemicals with CAS numbers, telephone numbers for facility employees and other persons to be contacted in case of such emergencies.

(b) All information requested on county emergency management data storage sheets must be provided on the forms provided by the county or in a substantially similar format and must be placed in the data storage box. Such information must be updated continuously to ensure its accuracy.

(c) The data storage boxes themself shall be of the type designated and approved by the county local emergency planning committee and shall be located at or near the primary vehicle entrance to the facility and installed in accordance with directives of the chief of the fire department serving the facility.

(d) A hazardous identification placard, approved by the town fire marshal, must be attached to the exterior of the cabinet.
(Code 1982, § 9-72; Ord. No. 92-30, § 1, 4-9-1992)

Sec. 16-87. Violation; enforcement.

Enforcement actions may be initiated by the town fire marshal, the county emergency management director, or chief of the town fire department.
(Code 1982, § 9-73; Ord. No. 92-30, § 1, 4-9-1992)

Chapter 17

RESERVED

Chapter 18

HEALTH AND SANITATION*

Sec. 18-1. Enforcement—Generally.
Sec. 18-2. Same—Interference.
Sec. 18-3. Right of entry.
Sec. 18-4. Violations.
Sec. 18-5. Open wells.
Sec. 18-6. Stagnant water.
Sec. 18-7. Premises kept free from discarded appliances, vegetation, etc.
Sec. 18-8. Public drains.
Sec. 18-9. Weeds and undergrowth.
Sec. 18-10. Home composting.

***State law references—**Municipal health ordinances, G.S. 160A-174; public health ordinance abatement of public health nuisances, G.S. 160A-193; placing refuse within town, G.S. 160A-303.1; public enterprises, G.S. § 160A-311 et seq.

Sec. 18-1. Enforcement—Generally.

The enforcement of this chapter shall be under the supervision of the town manager or designee with the aid and advice of the county health officer.
(Code 1982, § 10-1; Ord. No. 92-36, § 1, 6-11-1992)

Sec. 18-2. Same—Interference.

No person shall hinder, obstruct or delay the town manager or designee or any of his assistants in the lawful discharge of their duties under this chapter.
(Code 1982, § 10-2; Ord. No. 92-36, § 1, 6-11-1992)

Sec. 18-3. Right of entry.

The town manager or designee or any of his assistants shall have the right to enter, at any reasonable time, any premises for the purpose of making the inspections or investigations as required by this chapter.
(Code 1982, § 10-3; Ord. No. 92-36, § 1, 6-11-1992)

Sec. 18-4. Violations.

(a) Violations of the provisions of this chapter constitute a detriment, danger and hazard to the health, safety and general welfare of the inhabitants of the town and are found, deemed and declared to be public nuisances wherever the same may exist and the creation, maintenance, or failure to abate any nuisances is hereby declared unlawful. In case of a violation of the provisions of this chapter, the town manager or designee shall provide written notice, hereafter referred to as a correction notice, to the owner and any person in possession of the subject property naming the address of the property in violation, the specific violation, and time period in which the violation shall be abated.

(b) Should any owner or occupant fail or refuse to abate the violation within the time period specified in the correction notice, the manager may proceed to abate the violation without additional notice and the cost thereof shall be charged against the subject property. The manager shall prepare a statement showing the actual costs of the abatement of the unlawful condition plus an additional fee of ten percent of the total cleanup costs with a minimum of $100.00 to cover the cost of notice and costs of collection. The town shall thereupon mail to the owner of the subject property a bill covering the cost, if with reasonable diligence the name and address of such owner can be ascertained, and the amount of the bill shall become a lien upon the property, and if not paid within 30 days shall be collected as in the manner provided for the collection of delinquent taxes. Nothing contained herein shall limit the authority of the town to summarily abate public health nuisances.
(Ord. No. 05-003, 2-24-2005; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 18-5. Open wells.

(a) No person, after discontinuing the use of any well, shall leave said well open and exposed.

(b) The use of a well shall be deemed to be discontinued when it shall not be used by a person dwelling on the land upon which the well is located for a period of more than 30 days.

(c) A well shall be deemed open and exposed when its use is discontinued unless:

(1) The mouth or top of such well shall be securely and carefully covered so as to permit the entry of an object no larger than 15 cubic inches in size.

(2) A fence or wall not less than three feet in height shall completely surround said well.

(d) An open and exposed well within the town, the use of which has been discontinued, is hereby declared to be a public nuisance.

(e) No person shall discontinue the use of any well within the town for a period of more than 30 days without:

(1) Carefully and securely filling the same.

(2) Covering the mound or top of such well and erecting a fence or wall surrounding the well as set forth in subsection (c) hereof.

(Code 1982, § 10-17; Ord. No. 92-36, § 1, 6-11-1992)

State law reference—Construction or abandonment of wells, G.S. § 87-83 et seq.

Sec. 18-6. Stagnant water.

No owner, lessee, tenant or occupant of any building or premises shall keep or permit thereon any standing water to be or remain in any pool, pond or open vessels or keep or permit thereon any decaying animal or vegetable matter or any substance injurious to health.

(Code 1982, § 10-18; Ord. No. 92-36, § 1, 6-11-1992)

Sec. 18-7. Premises kept free from discarded appliances, vegetation, etc.

(a) Every person owning or occupying any premises shall keep such premises free from all trash and all other forms of offensive animal or vegetable matter or refuse which may be dangerous or prejudicial to the public health, constitute a fire hazard or which may constitute a public nuisance or an attractive nuisance to children.

(b) Every person owning or occupying property shall dispose of all cut or fallen trees, stumps, limbs, leaves and all other vegetable matter or refuse, and the same shall not be permitted to remain upon any property within the town, except as provided for in this chapter for home composting [section 18-10].

(c) No person shall leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his control, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator, stove or other container which has an airtight door or lid, snaplock or other locking device which may not be released from the inside, without first removing said door or lid, snaplock or other locking device from the icebox, refrigerator, stove or container.

(Code 1982, § 10-19; Ord. No. 92-36, § 1, 6-11-1992; Ord. No. 93-05, § 1, 2-11-1993)

Sec. 18-8. Public drains.

No person shall obstruct in any manner any street drainage ditch, gutter, drain or culvert so as to prevent the free flow of water therein; provided, that this shall not prevent the erection of footbridges over the ditches, gutters and drains along streets which have not been curbed and the gutters and drains along paving, of the width of three feet for pedestrian crossings to sidewalks leading to doorways, and bridges of the width of ten feet for vehicle crossings into lots where such crossings are required. Such bridges shall be so constructed as not to prevent the flow of water to or in gutters, ditches and drains.
(Code 1982, § 10-20; Ord. No. 92-36, § 1, 6-11-1992)

Sec. 18-9. Weeds and undergrowth.

No owner, lessee, occupant, or agent, servant, representative or employee of any lessee or occupant, having control of any lot or ground situated in the town, shall allow or maintain on any such lot any growth of weeds and undergrowth to a height of over eight inches. If any person shall fail, refuse or neglect to cut, destroy or remove such weeds within two days after the receipt of notice to do so given by the public works code enforcement officer, then the town, through its agents and employees, may enter upon such lot or premises for a depth of 50 feet from each abutting property line and cut and destroy such weeds and undergrowth for a depth of 50 feet from each abutting property line, and the cost and expense thereof shall be paid by the owner, lessee, occupant or agent, or it shall become a lien against such property in the same manner as for taxes. If the owner of the lot or ground, or his address, is unknown, the notice herein provided shall not be required. The property owner shall destroy all ragweed and other pollen-producing weeds growing on any lot or along or in the streets of the town before August 15 of each year.
(Code 1982, § 10-22; Ord. No. 92-36, § 1, 6-11-1992)

Sec. 18-10. Home composting.

(a) Home composting is a means of reducing the solid waste generated in the residential community. It is allowed in residential zoning districts when done as provided for in this section, by the owner or the occupant of the residential property upon which the home composting takes place. Home composting shall not be done by any business, commercial, industrial or institutional entity.

(b) Waste materials being composted must be generated on the property where the composting takes place.

(c) Composting activity shall not occur within 25 feet of any structure which is used for dwelling purposes.

(d) Materials being composted, which may attract animals such as dogs, cats, skunks, opossums or raccoons, shall be protected in such a manner so as to prevent access to the composting material by such animals.

(e) Materials being composted shall not include human body wastes; fecal wastes from dogs, cats, and other household pets; or meat or dairy waste products. Fecal wastes from chickens kept

in accordance with the provisions of the Land Development Ordinance may only be composted on the site where the chickens are being kept.

(f) Composting activity shall not create any condition where the material being composted may be blown from the residential lot upon which the composting is taking place.

(g) Composting activity shall not create any condition which is conducive to the existence and breeding of rodents or insects or otherwise create a condition which is hazardous to the health of the citizens.

(h) Composting activity shall not produce any odor whatsoever which is offensive to individuals living in the vicinity. That odor shall not be detectable by an odor detection and measurement device when such device is used on an adjacent lot. If composting is being done on a property on which more than one dwelling exists, the composting shall not create any detectable odor which offends the other inhabitants on the property.

(Code 1982, § 10-23; Ord. No. 93-09, § 1, 2-11-1993; Ord. No. 2012-Code-04, 8-23-2012)

Chapter 19

RESERVED

Chapter 20

LICENSES AND BUSINESS REGULATIONS*

Article I. In General

Sec. 20-1. Licenses or permits; refusal to issue; suspension, revocation; notice, hearing.
Sec. 20-2. Pawnbrokers.
Sec. 20-3. Peddlers and solicitors.
Secs. 20-4—20-24. Reserved.

Article II. Reserved

Secs. 20-25—20-66. Reserved.

Article III. Taxicabs

Division 1. Generally

Sec. 20-67. Definitions.
Sec. 20-68. Compliance with chapter; exception.
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Sec. 20-70. Records.
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Sec. 20-72. Rates and charges.
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Secs. 20-75—20-104. Reserved.

Division 2. Permits

Sec. 20-105. Required.
Sec. 20-106. Issuance.
Sec. 20-107. Application.
Sec. 20-108. Issuance standards and procedures.
Sec. 20-109. Expiration and renewal.
Sec. 20-110. Suspension or revocation.
Secs. 20-111—20-133. Reserved.

***State law references—**Taxation, G.S. Ch. 105; peddlers, itinerant merchants, etc., G.S. 160A-178; regulating and licensing businesses, trades, etc., G.S. 160A-194.

Division 3. Vehicles and Equipment

Sec. 20-134. Vehicle inspection.
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Article IV. Towing from Private Parking Lots

Sec. 20-150. Purpose and intent.
Sec. 20-151. Applicability.
Sec. 20-152. Definitions.
Sec. 20-153. Notice required.
Sec. 20-154. Report to police department required.
Sec. 20-155. Response time; towing receipt required; methods of payment.
Sec. 20-156. Release prior to tow; retrieval of personal property.
Sec. 20-157. Regulations for tow storage lots.
Sec. 20-158. Violations; responsible party.
Sec. 20-159. Penalties.

ARTICLE I. IN GENERAL

Sec. 20-1. Licenses or permits; refusal to issue; suspension, revocation; notice, hearing.

(a) The town may refuse to issue a license or permit, or the licenses or permits issued pursuant to this Code, unless otherwise provided hereunder, may be suspended or revoked by the town manager or other authorized official, department, board or agency where applicable, after notice and hearing for any of the following causes:

(1) Any fraud, misrepresentations or false statements contained in the application for permit or license;

(2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, merchandise and services;

(3) Any violation of this Code and/or any ordinance of the town;

(4) Conviction of the applicant, licensee or permittee of any crime or misdemeanor involving moral turpitude or a violation of any act of this state, or any law of the United States having a reasonable relationship to the purpose and scope of the permit or license;

(5) Conducting the activity under this Code and/or any ordinance of the town in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, morals or general welfare of the public.

(b) Notice of hearing for the suspension or revocation of a license or permit shall be in writing given by the town clerk, setting forth specifically the grounds of the complaint and the time and place of the hearing. Service of such notice shall be made either by personal service or by certified mail, return receipt requested, to the applicant, licensee or permittee at the last known address, at least five days prior to the date set for the hearing.

(c) In case of refusal to issue a permit or license or the suspension or revocation of a license or permit as herein provided, no portion of the application, license or permit fee shall be returned to the applicant, licensee or permittee unless otherwise provided in this Code and/or any ordinance of the town.

(d) Any suspension or revocation hereunder shall not be considered a recovery or penalty so as to bar any other penalty from being enforced.

(e) The order of the town manager or other authorized official, department, board or agency where applicable, shall be the final municipal action for the purpose of judicial review.
(Code 1976, § 1-12; Code 1982, § 11-4)

Sec. 20-2. Pawnbrokers.

The provisions of G.S. ch. 66, art. 45, part 1 are hereby adopted.
(Code 1982, § 11-5; Ord. No. 89-69, § 1, 9-14-1989; Ord. No. 2013-Code-02, 6-13-2013)
State law reference—Authority to adopt G.S. 66-397.

Sec. 20-3. Peddlers and solicitors.

(a) *Intent.* The purpose of this section is to regulate the door-to-door offering for sale and selling of goods, wares, merchandise, food, periodicals and services and the solicitation of orders therefor in residential areas of the town, and to thereby promote the public safety and welfare.

(b) *Permit required.* It is unlawful for any person, firm or corporation to sell, offer for sale, or solicit orders for goods, wares, merchandise, food, periodicals or services by going from door-to-door ("peddle" or "solicit") within the town without having first secured a peddler/solicitor's permit from the town as provided for in this section, unless it is done with the prior request or invitation of the residents or occupants of the premises visited. Additionally, it is unlawful to peddle or solicit unless the following requirements are met:

(1) Such peddling/soliciting shall be permitted only between the hours of 9:00 a.m. and 6:00 p.m. during eastern daylight time and 9:00 a.m. to 5:00 p.m. during eastern standard time.

(2) The peddler/solicitor permit issued for that person shall be carried and displayed at all times while conducting such solicitations in such a manner as to be clearly visible to a reasonable person of adequate vision.

(3) All other permits or licenses required by law shall have been obtained.

(c) *Permit applications.* Applications for peddler/solicitor permits under this section shall be submitted to the police department during normal business hours (Monday through Friday, 9:00 a.m. to 5:00 p.m. eastern time) on a form provided by the police department, under oath, and shall include, but not be limited to, the following information:

(1) The full name of the applicant;

(2) The permanent residence address of the applicant;

(3) The applicant's temporary address in or in the vicinity of the town, if applicable;

(4) The name and address of the applicant's employer or the organization with which the applicant is associated in connection with the sale activity or solicitation of orders;

(5) The type(s) of goods, wares, merchandise, food, periodicals and services to be sold or offered for sale;

(6) The period for which the application is sought, which shall not exceed 60 consecutive calendar days; provided that the permit may be renewed for sixty-day periods without limit, upon proper application therefor;

(7) A record of any and all crimes of which the applicant has been convicted or has pleaded no contest in the ten years preceding the submittal of the application;

(8) The age, height, weight, and any other additional information which the town may reasonably require for identification, including a copy of the document(s) used by the applicant to verify personal identification (e.g., driver's license, passport, picture I.D.);

(9) A complete listing of and information concerning all other permits or licenses which were obtained by the applicant;

(10) If an application is filed by an employer, there shall also be filed separate applications for each peddler/solicitor giving the information set forth above for each peddler/solicitor and signed and sworn to by each peddler/solicitor, and a separate permit shall be issued for each applicant.

(d) *Procedures for considering applications.*

(1) Upon receipt of a complete application, the police chief or designee (hereafter "police chief") shall make or cause to be made such investigation as reasonably necessary to verify the information in the application and to assure compliance with the provisions of this section and shall issue a permit unless the applicant:

a. Has not submitted a completed application;

b. Is not permitted by law to engage in such activity due to age;

c. Has been convicted of, or has pleaded no contest to, a felony charge within the ten years preceding the submittal of the application;

d. Has been, within the previous five years, convicted of, or pleaded no contest to, a misdemeanor charge involving theft, fraud, forging, uttering, or other crimes of like nature or any crime involving moral turpitude;

e. Does not have valid driving privileges in the state in those cases where the applicant will be operating a vehicle in the course and scope of the peddling/soliciting; or

f. Has not obtained the necessary licenses.

(2) The police chief shall approve or deny an application and issue a permit as soon as possible and, except in the case of extraordinary circumstances, as when a number of applications are submitted within a short period of time, should act within 72 hours of receipt of the completed application. Such issued permit shall be nontransferable.

(e) *Permit renewal.* A peddler/solicitor permit may be renewed for an unlimited number of sixty-day periods, provided an application for renewal is made on such form as provided by the police chief no later than the expiration date on the current valid permit. Applications received after that date shall be processed as new applications. The police chief shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this section. If the police department finds that the application meets the above requirements, the renewal permit shall be issued.

(f) *Appeals.* The appeal of a refusal to issue a permit or the revocation of a permit shall be made to the town manager by filing a written notice of appeal, specifying with particularity the grounds upon which the appeal is made, no later than ten days from the date of the refusal to issue a permit or the revocation of a permit. The town manager or designee ("town manager") shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties, and shall render a decision within a reasonable time. As provided in section 20-1(e), the order or decision of the town manager shall be final municipal action.

(g) *Revocation of permit.* Permits issued under this section may be revoked in accordance with section 20-1. Additional grounds for revocation of a permit include, where evidence is presented, that the applicant has been arrested for a felony or a misdemeanor involving theft, fraud, forgery, moral

turpitude, criminal trespass, or a threat to the public safety during the peddling/solicitation period, or has otherwise violated the provisions of this section. A permit which has been revoked shall be immediately surrendered to the police department. Appeals of revocations may be made pursuant to the same process as for denied permits.

(h) *Exemptions.* This section shall not apply to:

(1) The delivery of goods or services which have been ordered before delivery;

(2) The circulation of petitions for signature or lawful distribution of advertising materials, flyers, or materials expressing views on political, social or religious matters;

(3) The lawful promotion or expression of views concerning political, social, religious and other like matters;

(4) The sale or offering for sale of goods, wares, merchandise, food, periodicals or services by bona fide members or representatives of charitable, religious, civic, or fraternal organizations who receive no compensation of any kind for their services, and such sale or offering by children under the age of 18 years who are students in a public or private school for school activities;

(5) The solicitation of contributions or pledges thereof for bona fide nonprofit organizations;

(6) The sale or delivery of goods to business establishments;

(7) The sale or soliciting of orders for the sale of milk, dairy products, vegetables, poultry, eggs, and other farm and garden produce so far as the sale of such commodities named herein is now authorized by law.

(i) *Peddling/soliciting from rights-of-way.* Peddling or soliciting from rights-of-way is prohibited in accordance with G.S. 20-175 except that the distribution of newspapers on the non-traveled portions of a street is allowed, provided that the distribution does not impede the normal movement of traffic.

(j) *Penalty.* Peddling or soliciting without a permit or otherwise in violation of any of the provisions of this section, including failing to surrender a revoked permit, shall constitute a criminal misdemeanor.

(Code 1976, § 5-4; Code 1982, § 11-3; Ord. No. 79-5, § 1, 5-31-1979; Ord. No. 96-003, § 1, 3-14-1996; Ord. No. 96-004, § 1, 4-11-1996; Ord. No. 02-001, § I, 1-10-2002; Ord. No. 2010-Code-02, 3-10-2010; Ord. No. 2015-Code-002, 6-25-2015)

State law reference—Peddling or soliciting from right-of-way, G.S. 20-175.

Secs. 20-4—20-24. Reserved.

ARTICLE II. RESERVED

Secs. 20-25— 20-66. Reserved.

ARTICLE III. TAXICABS*

DIVISION 1. GENERALLY

Sec. 20-67. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief means the chief of police of the town of Cary and his or her designee(s). The chief is responsible for the administration of this article.

Driver means any person who actually drives a taxicab on the streets of the town for hire. The term "drive" or "driving a taxicab" means driving a taxicab for hire on such streets.

Driver's permit means the license, issued by the chief, under which a person may drive a taxicab for hire.

Limousine means for hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways.

Memorandum operating permit means the card issued by the chief to a taxicab operator for display within a taxicab indicating that an operating permit has been issued covering the operation of such taxicab.

Operating permit means the license issued by the chief under which a person may operate a taxicab, and which shows that proof of financial responsibility and other requirements of this article have been met and that the convenience and necessity of the public requires the operation of such taxicab(s).

Operator means any person who owns one or more taxicabs or who engages in the operation of one or more taxicabs under a trade or service name.

Owner means the owner of a taxicab and any person holding legal right to possession or management of one or more vehicles being operated as a taxicab.

Permit means an operating permit and a driver's permit, as the context requires.

Person means and includes an individual, partnership, corporation, limited liability company, and all other legal entities including an association of taxicab owners/drivers.

Proof of financial responsibility means a certificate of any insurance carrier duly authorized to do business in the state of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab, his or her agents and employees while in the performance of their duties, against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation, including driving, of such taxicab or taxicabs in the limits required by state law (G.S. 20-280(b)), as amended from time to time. For purposes of this definition, the term "operator" shall mean and include any driver of the taxicab.

***State law references—**Municipal regulation of taxicabs and drivers, G.S. §§ 20-37, 160A-304; registration of taxicabs by state, G.S. § 20-87; financial responsibility, G.S. § 20-280.

Rate card means a card for the display of the rates or fares for the use of the taxicab.

Taxicab means a passenger motor vehicle plying for hire for which public patronage is accepted or solicited and which is so designed as to seat comfortably not more than nine persons but shall not include motor vehicles or motor vehicle carriers as defined in G.S. ch. 20, art. 17.

Taximeter means a mechanical device which is installed in a taxicab for the purpose of computing the fare for a trip upon the basis of distance traveled, waiting time, or both.
(Code 1982, § 18-1; Ord. No. 98-022, 12-10-1998; Ord. No. 2015-Code-002, 6-25-2015)

Sec. 20-68. Compliance with chapter; exception.

It is unlawful for any person to engage in the business of operating one or more taxicabs, or to drive any taxicab, within the corporate limits of the town or within one mile beyond the corporate limits in every direction, unless such person shall have complied, and shall continue to comply, with the provisions of this chapter. Notwithstanding the preceding, taxicab drivers and operators who are duly licensed in another jurisdiction may come into the town to pick up or deliver persons if their services were requested by the passenger, provided they do not solicit fares within town limits. The term "solicit fares" shall include directing advertisement of their services toward town residents, such as advertising in the town phone directory.
(Code 1982, § 18-2; Ord. No. 98-022, 12-10-1998)

Sec. 20-69. Proof of financial responsibility.

The operator and driver of every taxicab shall furnish and keep in effect for each taxicab proof of financial responsibility. The insurance policy shall contain a clause obligating the insurance company to give 15 days' written notice to the chief prior to the cancellation of such insurance on any taxicab. The operating permit for any taxicab shall be automatically revoked upon the lapse, cancellation or termination of the insurance on that vehicle unless the same has been renewed or replaced and a new certificate filed with the chief.
(Code 1982, § 18-3; Ord. No. 98-022, 12-10-1998; Ord. No. 2015-Code-002, 6-25-2015)

Sec. 20-70. Records.

Every operator and driver shall keep a daily record of all calls received from persons requesting transportation. Every driver shall keep a record of his or her trips, including origin, destination, fare charged, time the driver received the passenger, the time the driver completed the trip, and the fare received. Such information shall be recorded on the driver's trip sheet immediately upon the completion of each trip. Such record shall be open to inspection at all times by the police department, and the trip sheets shall be filed chronologically by car and date at the central taxicab office of the operator within 96 hours from first day of use and shall remain on file at such location for a period of three months. Every taxicab driver after receiving a call from the dispatcher to pick up a passenger shall notify the dispatcher immediately after picking up the passenger of the time such passenger was picked up.
(Code 1982, § 18-3.1; Ord. No. 98-022, 12-10-1998)

Sec. 20-71. General prohibited practices.

(a) *Prohibited practices.* In addition to the practices prohibited elsewhere in this chapter, it shall be unlawful:

(1) *Refusal to transport passengers.* For a driver to refuse to transport any orderly person applying to driver for transportation within the limits of the town when the taxicab has not been previously engaged by another.

(2) *Passenger seating.* For a driver to transport in a taxicab more than the number of passengers specified as its capacity by the manufacturer at the same time, or to transport a child under the age of three years unless the child is in an approved child safety seat.

(3) *Illegal use of a cab.* For a driver, on or off duty, to knowingly permit a taxicab to be used for any illegal act listed in G.S. Ch. 14, arts. 26 and 27 (being G.S. 14-177 through 14-202 and 14-203 through 14-208) or to transport any person in a taxicab to any place used for such purposes, or to acquire and transport in a taxicab any alcoholic beverage for another, or to transport any person to any place where alcoholic beverages are illegally dispensed or stored.

(4) *Lost property.* For a driver to fail, refuse or neglect to preserve any property left in a taxicab by any passenger and to deliver it to the operator, who shall report the same to the police department within 24 hours thereafter.

(5) *Deviating from direct route.* For a driver to fail, refuse or neglect to proceed with all reasonable dispatch by the nearest practicable route to the destination of the first person applying to him for transportation unless the person has granted permission to take on or wait for additional passengers.

(6) *Solicitation.* For any person to solicit passengers for a taxicab except the driver thereof when sitting upon the driver's seat of the vehicle.

(7) *Illegal rates.* For a driver to charge or attempt to charge a passenger a greater or lesser rate of fare than that which is posted in the vehicle as required by this chapter.

(b) *Suspension/revocation of permit for violation.* Upon any violation of the provisions of this section, the driver's permit of the violator may be suspended or revoked in accordance with the procedures provided in section 20-110.
(Code 1982, § 18-3.2; Ord. No. 98-022, 12-10-1998; Ord. No. 2010-Code-02, 3-10-2010)

Sec. 20-72. Rates and charges.

(a) No person operating or driving a taxicab may charge for the use of a taxicab within the town in an amount greater than in accordance with the following rates:

(1) Mileage: Two dollars and thirty cents for the first one-sixth mile or fraction thereof and 30 cents for each additional one-sixth mile or fraction thereafter. At this rate, the charge for the first mile may be four dollars and ten cents and the charge for each additional full mile may be one dollar and eight cents.

(2) Waiting time: Twenty-five cents for each sixty-second period, or fraction thereof, of waiting time.

(3) Foot lockers: Fifty cents each.

(4) Trunks: One dollar for each trunk, except where two persons are required to handle, in which case the charge shall be one dollar and fifty cents for each trunk.

(5) Hand baggage: Ten cents for each piece of hand luggage in excess of one per person.

(6) Groceries in bags: Ten cents for each bag or sack in excess of one bag per person.

(7) Groceries in cartons, boxes or crates: Ten cents for each container.

(8) Bulky items: Fifty cents for each article, container or commodity (such as, but not limited to, bags, cartons, boxes or crates of groceries, coal, feed, fertilizer, rolls of roofing paper and the like) weighing more than 50 pounds.

(b) A sign setting forth these maximum rates shall be posted inside the taxicab at a conspicuous place where it will be visible to passengers. The driver of the taxicab shall not reset the taximeter until the fair is paid.
(Code 1982, § 18-3.3; Ord. No. 98-022, 12-10-1998; Ord. No. 01-007, § 1, 5-10-2001)

Sec. 20-73. Enforcement and penalties.

(a) *Civil penalty.* In addition to all other remedies and sanctions available to the town or imposed under law, there is hereby imposed a civil penalty in the amount of $50.00 for the first violation of any provision of this chapter in any 12-month period and $100.00 for any subsequent violation in a 12-month period.

(1) The levying of civil penalties may be initiated by any police officer giving written notice of the violation along with a statement that a civil penalty is being imposed. The notice shall inform the recipient that he or she may appeal the civil penalty within ten days to the chief. If an appeal is made, a hearing shall be held before the chief, who, following the hearing, shall affirm or reverse the imposition of the penalty. A notice of violation that is not appealed, or one affirmed after appeal, shall be considered finally assessed.

(2) For the second and successive violations of any of the provisions of this chapter during any 12-month period, the civil penalty shall be double that for the first violation.

(3) Civil penalties shall be paid within 30 days to the office of the revenue collector of the town. If not so paid, the town may initiate a civil action in the name of the town in the nature of debt to collect any unpaid penalty.

(4) Any permit required to be issued or renewed under this chapter shall not be issued or renewed unless and until all civil penalties that have been assessed against the applicant, or any employee of the applicant, have been paid in full.

(b) *Misdemeanor offenses.* In addition to the civil penalty, violations may also be punishable as a misdemeanor offense.
(Code 1982, § 18-3.4; Ord. No. 98-022, 12-10-1998)
State law reference—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 20-74. Defrauding Taxicab.

No person who engages, uses, employs or hires a taxicab shall fail or refuse to pay the required rate or fare with intent to cheat and defraud the taxicab owner or driver. Violation of this section shall be a misdemeanor. This section not only applies to intra-city trips, but also to legally licensed taxicabs from other jurisdictions that enter the town to reach a destination, where the failure or refusal to pay occurs within the town.
(Ord. No. 2011-Code-02, 3-10-2011)

Secs. 20-75—20-104. Reserved.

DIVISION 2. PERMITS

Sec. 20-105. Required.

(a) *Operating permit.* No person shall operate, or permit to be operated or driven, any taxicab without first having obtained, and having in effect, an operating permit authorizing the operation of each vehicle engaged as such. Upon issuance of an operating permit, the chief shall also issue a memorandum operating permit. All taxicabs shall at all times display the memorandum operating permit covering such taxicab.

(1) *Limitation on number of operating permits.* The town council may, by resolution, limit the total number of operating permits issued. At the time of adoption of this chapter, the total number is 30. The chief may make recommendations for changes in the number of available operating permits.

(2) *Transferability.* Operating permits are not transferable from one vehicle to another, nor are they transferable between persons.

(3) *Review of drivers.* The operating permit holder shall review the qualifications of all drivers seeking to drive the taxicab under the operating permit. No operating permit holder shall permit or allow any driver to drive a taxicab under his or her operating permit unless, after reasonable inquiry, it appears that the driver has a valid state and Town of Cary taxicab driver's permit, and has met all the requirements of this chapter for taxicab drivers.

(4) *Required phone service.* Every operating permit holder shall advertise in the local telephone book making the public aware of the services provided by the operator and shall operate and maintain a business location capable of dispatching and receiving local telephone calls for service from town citizens.

(b) *Driver's permit.* No person shall drive a taxicab unless that person shall have been issued, and shall have in effect, a driver's permit under this chapter. An identification card containing the name and photograph of the permit holder and the permit number shall be issued by the chief as evidence of the driver's permit. Such identification card shall also bear the name of the chief and the following words in bold type or print:

PASSENGERS—FOR YOUR PROTECTION, KEEP A RECORD OF YOUR DRIVER'S NAME AND NUMBER.

(c) *Display of identification.* Such identification shall be on display in such a manner as to be in full view of all passengers at all times while the driver is on duty. The driver shall retain custody of the identification card, and present it, on demand, for inspection by any passenger or law enforcement officer.
(Code 1982, § 18-4; Ord. No. 98-022, 12-10-1998)

Sec. 20-106. Issuance.

(a) *Issuance/compliance with chapter.* The chief shall take applications for, and issue, permits. No permit shall be issued to, or renewed by, any person who has not complied with all the applicable requirements of this chapter and paid in full all civil penalties that may have been finally assessed hereunder. The fee for all driver's permits is $15.00.

(b) *False information.* Submission of false or misleading information to obtain or renew a permit or in submitting reports under this chapter is unlawful, shall be a misdemeanor, and shall be grounds for denial, suspension or revocation of a permit.

(c) *Right to investigate.* Submission of an application for a permit shall constitute a waiver of any privileges and rights of privacy with respect to any document in existence reasonably related to the determination of the applicant's qualifications and shall serve as an authorization to the chief to make inquiry of any person or entity, and to receive any oral or written reports from any person or entity, regarding any facts, evidence or information reasonably related to the determination of the applicant's qualifications. The applicant shall sign any separate written authorization that any person may require to release documents or information concerning the applicant.

(d) *Town property.* All permits and memorandums of permit shall be and remain the property of the town. Loss, theft, destruction or defacement shall be immediately reported to the chief and a replacement permit obtained.
(Code 1982, § 18-5; Ord. No. 98-022, 12-10-1998)

Sec. 20-107. Application.

(a) *Operating permit.* All applications for an operating permit shall be submitted by the owner. The applicant shall file with the chief a sworn application, in duplicate, on forms provided by the chief. If the applicant desires an operating permit for more than one taxicab, such application may be made on one form and shall provide supporting information for each taxicab for which an operating permit is desired. If the applicant is a corporation, then the information requested about the applicant shall also be provided about each officer, director and about each stockholder owning 20 percent or more of the outstanding stock. If the applicant is a limited liability company, such information shall be provided about its managers and each of its members. If the operator is a partnership, such information shall be provided about each of its partners. The application must contain the following information:

(1) Information reasonably necessary to identify the applicant. If the applicant is a corporation or a limited liability company, the application shall include a certified copy of the articles of incorporation or organization, as the case may be.

(2) Description of the experience of the applicant in the transportation of passengers for hire.

(3) Description of any unpaid or unbonded judgments of record against the applicant, including the title of all actions, the amount of each judgment and judgment docket reference information.

(4) Court records of the applicant and of any person who functions as a general manager. Fingerprints of the applicant shall be submitted so a fingerprint check can be made.

(5) An accurate and complete description of the proposed or actual taxicab operation and any other information necessary in order for the chief to evaluate the applicant's ability to provide and maintain taxicab service as required under this chapter.

(6) Information concerning each taxicab for which an operating permit is sought, as follows:

a. Full name, address and phone number of the taxicab owner;

b. Full description of the vehicle, including make, type, year of manufacture, state license number, engine and serial number, cab number, color scheme, lettering and marks, and its seating capacity exclusive of the driver;

c. Proof of financial responsibility for each taxicab;

d. Description of all liens, mortgages, and other encumbrances on the taxicab, and lienholder, amount and character thereof;

e. Such other information, evidence and documents, as the chief may require to assure that the requirements of this chapter have been or will be met.

(b) *Driver's permit.* All applicants for a driver's permit shall file with the chief a sworn application, in duplicate, on forms provided by the chief which shall require submission of such information as may be needed by the chief to conduct a background investigation on the applicant. By submitting an application for a driver's permit, applicants agree that they accept the town's taxicab driver's dress code. Applicants agree to be clean and neat in appearance and not wear flip-flops or sandals, tank or T shirts, or shorts while on duty as a taxicab driver. All applications shall provide the following information:

(1) Applicant's full name, age, date of birth, place of birth, business and home address and phone numbers, state driver's license number and a physical description, including height, weight, sex, race, color of eyes and hair, complexion, and body and facial marks, if any;

(2) The length of time the applicant has resided in the town and in the state, and citizenship information;

(3) A current health certificate issued by the health department, or by a licensed physician, within the previous 12 months stating that the applicant has no impairments that would endanger the life of any passenger riding in the taxicab;

(4) Applicant's employment history for the previous ten years and previous experience driving taxicabs and other vehicles for hire;

(5) Applicant's court and driving records;

(6) Two copies of a photograph taken within the previous six months and a completed fingerprint card;

(7) A letter of introduction from the operator who proposes to hire the driver, if any, and affidavits of good character from two reputable citizens who have personal knowledge of the applicant.

(Code 1982, § 18-6; Ord. No. 98-022, 12-10-1998; Ord. No. 2015-Code-002, 6-25-2015)

Sec. 20-108. Issuance standards and procedures.

(a) *Investigation.* The chief shall cause an investigation to be made of the applicant. No permit shall be issued or renewed unless the applicant meets the requirements of this chapter including the following:

(1) Is at least 18 years of age or is otherwise legally emancipated and is a U.S. citizen or possesses documentation of eligibility to work in the United States;

(2) Has neither entered a plea of guilty or no contest to nor has been convicted of or had an order entered continuing prayer for judgment to any of the following:

a. Any felony against the state or any offense against another state which would have been a felony if committed in North Carolina;

b. Any federal or state law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;

c. Any federal or state law relating to prostitution;

(3) Is not a habitual user of, or addicted to, narcotic or barbiturate drugs or intoxicating liquors;

(4) Has no unpaid and unbonded judgments of record against the applicant; or, if such exist, demonstrates the establishment and maintenance of regular periodic payments in discharge of the liability;

(5) Provides proof of financial responsibility;

(6) Has not had any permit issued under this chapter revoked within the 24 months preceding the application;

(7) Has paid in full any civil penalties finally assessed under this chapter;

(8) Must also, if an applicant for an operating permit:

a. Not be in default in the payment of any indebtedness secured by lien, mortgage or any other encumbrance on the vehicle intended to be operated pursuant to the operating permit;

b. Have properly registered the vehicle to be operated with the state, and secured required state inspections and inspections in accordance with the requirements of this chapter;

(9) Must also, if an applicant for a driver's permit:

a. Be physically and mentally capable of safely driving a taxicab;

b. Possess a valid state driver's license issued to him or her;

c. Have an operating permit or permission from an operating permit holder to operate a taxicab under the operating permit;

d. Have not habitually violated traffic laws or ordinances. Habitual violation shall be deemed to mean more than two violations in any 12-month period of time;

e. Have not, within the previous 12 months, had a revocation or suspension of 60 days or more of his or her driver's license for convictions of moving violations; or, within the previous 24 months, been convicted of, or entered a plea of guilty or no contest to, driving under the influence of alcohol or drugs, or a substantially equivalent offense; or has not accumulated, within the three-year period preceding the application, 12 or more points under G.S. 20-16, or six or more points within the three-year period following the reinstatement of a state driver's license which had been suspended or revoked.

(b) *Appeal.* In the event the chief, or designee, denies issuance of a permit, such person shall specify, in writing, the grounds for such denial. The applicant shall have a period of ten days from receipt of notification of the denial and grounds therefor within which to appeal the denial to the chief or the town manager, pursuant to the procedures specified in section 20-110.
(Code 1982, § 18-7; Ord. No. 98-022, 12-10-1998)

Sec. 20-109. Expiration and renewal.

(a) Permits shall expire 12 months from the date of issue. Applications for renewal of permits shall be made at least 30 days prior to the date of expiration of the existing permit in the same manner as the application for an original permit, on such forms as may be required by the chief.

(b) The chief may refuse to renew an operating permit if the taxicab for which the permit was issued has not been in regular use and service in the town in the three months preceding the application for renewal. The purpose of this provision is to assure that the full allocation of operating permits are allocated to taxicabs that are actually used in service in the town.
(Code 1982, § 18-8; Ord. No. 98-022, 12-10-1998)

Sec. 20-110. Suspension or revocation.

(a) *Grounds.* In addition to any other penalty provided for, the chief shall have the right to suspend or revoke any permit if the applicant or permittee:

(1) Fails to operate the taxicab or taxicab business or to drive the taxicab in compliance with the requirements of this chapter, or fails to continuously meet the standards set forth in section 20-108;

(2) Fails to continuously maintain proof of financial responsibility;

(3) Submits or causes to be submitted false or misleading information on any application or report required under this chapter.

(b) *Procedure.* When grounds for suspension or revocation exist, the chief shall, by registered or certified letter, give notice to the permittee that the permit is suspended or revoked and must be immediately surrendered. It shall be unlawful for the person to whom the permit was issued to fail to return same to the chief. The permittee shall have ten days from the receipt of such notice to appeal the determination to the chief, if the initial determination was made by a designee of the chief, and to the town manager if the initial determination was made by the chief himself, by filing a written notice of appeal with the person who made the initial determination and the chief or the town manager, as the case may be. Such notice of appeal shall specify with particularity all the grounds for the appeal. The permit shall remain suspended or revoked pending such appeal. If no notice of appeal is filed within the allotted time, any right to an appeal is considered waived at the expiration of the ten-day period. If an appeal is filed and a hearing held and the suspension or revocation is confirmed by the chief, the permittee shall have ten days from receipt of the determination to appeal to the town manager by filing a written notice of appeal with the chief and the town manager. If an appeal was filed and a hearing held and the suspension or revocation was confirmed by the town manager, then the holder may not reapply for a taxicab permit for a minimum of 12 months.
(Code 1982, § 18-9; Ord. No. 98-022, 12-10-1998; Ord. No. 2019-Code-03, 9-26-2019)

Secs. 20-111—20-133. Reserved.

DIVISION 3. VEHICLES AND EQUIPMENT

Sec. 20-134. Vehicle inspection.

(a) *Upon application for permit and periodically.* In addition to annual state safety inspections, vehicles must be inspected under this chapter upon the filing of an application, or renewal application, for an operating permit. The chief may also, from time to time, cause to be made an inspection of taxicabs. If any vehicle is found to be unsafe or unfit for operation, notice shall be given to the driver and the operating permit holder and such vehicle shall not be operated until the same has been put in safe and fit condition.

(b) *Inspection items.* The inspection may include and cover the brakes, lights, horn, tires, all other safety features of the vehicle, a road test of the vehicle, an inspection and test of the taximeter, and an inspection of the interior of the taxicab with respect to the general condition of the upholstery, rugs, or floor covering and general cleanliness thereof and an inspection of the exterior condition of the vehicle which must be free of torn, flaking or protruding metal which could constitute a safety hazard. Additionally, the following, in good working order, is required on every taxicab:

(1) An electric light indicator on top of the vehicle no less than ten inches in width and four inches in depth and height designed so that when the taximeter is engaged the light is burning;

(2) A standard speedometer, visible to passengers, properly installed and maintained in good working order. No taxicab shall be operated as a taxicab if such speedometer is out of repair or disconnected;

(3) A heater and air conditioner sufficient to adequately heat and cool the interior of the taxicab in cold or warm weather, respectively;

(4) A frame or other device to display the driver's permit, memorandum operating permit and rate card to passengers;

(5) Taximeter as required by section 20-135. No taxicab shall be driven as a taxicab if the taximeter is out of repair or disconnected;

(6) Approved and working seat belts available to any passenger within the taxicab;

(7) Windshields, side and rear glass clear and free of dirt, discoloration and cracks;

(8) A two-way radio or cellular phone providing direct communication for immediate dispatching;

(9) Tires with a tread of at least three-thirty-seconds of an inch;

(10) Removable floor mats of rubber or other nonabsorbent material;

(11) Neat and sanitary interior with upholstery that is free of stains and tears and of original manufacturer's design and type with no temporary seat covers;

(12) Such other items as may be required by this chapter.

(c) *Inspection decal.* The chief may require that taxicabs that have been inspected and found to be in clean and proper condition display an inspection decal issued by the chief and displayed in

a location to be determined by the chief. At such time as the chief commences issuing inspection decals, no taxicab shall be operated on the streets of the town without displaying a current valid inspection decal.

(d) *Removal from service.* The discovery of any inadequacy in any of the items required to be inspected or tested by this chapter shall cause the taxicab to be removed from service until the taxicab has been repaired and complies with the requirements of this chapter. Such removal may be appealed to the chief in accordance with section 20-110 but the vehicle shall remain out of service pending the decision of the chief.
(Code 1982, § 18-10; Ord. No. 98-022, 12-10-1998)

Sec. 20-135. Taximeter.

(a) No person may operate or drive a taxicab unless the taxi is equipped with a taximeter of a design approved by the chief. In order to be approved, a taximeter must show, in figures which are plainly visible to a passenger, the amount of the fare.

(b) No taxicab shall be driven while occupied by a person other than the driver with the signal affixed to such taximeter in such a position as to denote such vehicle is not employed or in such a position as to denote that it is employed at a rate of fare different from that which is required by this chapter.

(c) No person shall operate or drive a taxicab if the seal is broken on the taximeter, or after the installation of a new or different taximeter, or after any repairs or alterations are made to the taximeter or to the taxicab, if the repairs or alterations to the taxicab will affect the operation of the taximeter in any manner, until the taximeter has been submitted to a taximeter repair mechanic designated by the chief for inspection and test for accuracy. The taximeter repair mechanic shall cause a seal to be affixed to all taximeters that pass inspections.

(d) No person shall use or permit to be used upon any taxicab a taximeter which shall be in such condition as to be more than five percent from absolute accuracy.
(Code 1982, § 18-11; Ord. No. 98-022, 12-10-1998)

Sec. 20-136. Identifying markings required.

(a) *Identification scheme.* Each operator shall adopt a color scheme or other identifying markings for identifying its taxicabs distinct from that of any other operator or firm and shall file such identification scheme with the chief. All additional, new or replacement vehicles put in operation by such operator shall comply with the identification scheme selected. No identification scheme shall be used unless filed with and approved by the chief, and no identification scheme shall be accepted by the chief if it in any way would be confused with the identification scheme of another operator, association or firm.

(b) *Display of name/number/rate.* The operator or operator's trade name, taxicab number and telephone number shall be painted with permanent paint or appear on a permanent decal on both sides and rear of each taxicab, with letters and numbers four inches high or greater. The taxicab number on the rear shall be at a location designated by the chief. There shall be painted on each side of the taxicab in letters and numbers at least three inches high the basic mileage rates. The color to be used for lettering and numbers shall be of sharp contrast to color or surface paint to which applied, so as to be easily visible at a reasonable distance, especially at nighttime with street lights. No lettering or numbers shall be acceptable which have been painted upon a sheet of metal or other material which, in turn, can be removed or detached to conceal the identification of the operator or taxicab number.
(Code 1982, § 18-12; Ord. No. 98-022, 12-10-1998)

Secs. 20-137—20-149. Reserved.

ARTICLE IV. TOWING FROM PRIVATE PARKING LOTS

Sec. 20-150. Purpose and intent.

(a) The town council of the Town of Cary has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.

(b) G.S. 160A-174 allows a municipality by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the municipality.

(c) Some practices related to the non-consensual towing of motor vehicles from parking lots located on private property have exposed the public or members of the towing industry to harm. Non-consensual towing can leave unknowing drivers without means of transportation and can lead to altercations between vehicle owners and towing personnel.

(d) The Cary Town Council desires to minimize and control the harmful and adverse effects resulting from the non-consensual towing of motor vehicles from parking lots located on private property, while also protecting lot owners' and lessees' property rights by ensuring that parking is available to those lawfully present on the property.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-151. Applicability.

(a) The provisions of this article apply to any private property used for residential or non-residential purposes, upon which a private parking lot is located.

(b) Notwithstanding the foregoing, this article does not apply to the towing, removal, or immobilization of a motor vehicle (i) if the motor vehicle obstructs adequate ingress and egress to, from, or within a private parking lot; (ii) if the motor vehicle has been abandoned on private property without the consent of the private property; or (iii) if the motor vehicle is being removed pursuant to the direction of a law enforcement officer or otherwise in accordance with the provisions of this Code or state law.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-152. Definitions.

(a) "Motor vehicle" shall have the definition provided in G.S. 20-4.01.

(b) "Private parking lot" means a lot, garage, or other parking facility not owned or leased by the Town or another governmental entity.

(c) "Towing or storage service" means any person or other entity, whether licensed or not, that engages in or who owns or operates a business which engages, in whole or in part, in the towing or removal of motor vehicles for compensation.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-153. Notice required.

(a) No motor vehicle may be towed from a private parking lot unless such towing meets the requirements of G.S. 20-219.2 and:

(1) One or more signs meeting at least one of the following requirements is posted as follows:

a. a sign prominently placed at each entrance allowing vehicular access to the private parking ("Entrance Sign"); or

b. if there are no curb or access barriers, at least one sign posted for every 50 feet of the frontage of the private parking lot to a public street ("Frontage Sign"); or

c. a sign posted at each parking space from which an unauthorized motor vehicle could be towed, removed, or immobilized ("Parking Space Sign").

(2) The posted sign(s) complies with the following.

a. Entrance or Frontage Signs shall be at least 24 inches by 24 inches in size, and shall not exceed six square feet.

b. Parking Space Signs shall be at least 12 inches by 18 inches in size, and shall not exceed six square feet.

c. All signs required by this Ordinance shall be permanently installed with the bottom of the sign not less than four feet above ground level, and not more than five feet above ground level. Pedestrian safety shall be taken into consideration when locating freestanding signs.

(3) The sign(s) required by this Ordinance shall clearly display the following:

a. The words "tow-away," "tow-away zone," or "towing enforced," or similar phrase. This phrase shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

b. Indication that parking by unauthorized motor vehicles is prohibited by a phrase such as "private parking," "leased parking," "no parking," "parking for customers only," "parking for residents only," or a similar phrase. This phrase shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and the background shall be on a contrasting background.

1. If parking by unauthorized motor vehicles is prohibited on a 24-hour per day basis, then that prohibition shall be posted, and state the days of the week and hours of the day during which that prohibition is in effect.

2. If parking by unauthorized motor vehicles is not prohibited on a 24-hour basis, then the days of the week and hours of the day during which parking is prohibited shall be posted.

c. If motor vehicles are subject to immediate towing when the motor vehicle operator steps off the property, whether the operator conducts business on the property or not, then the signs required by this Ordinance shall include the language "If you leave this property, your vehicle is subject to being towed. This includes patrons who are frequenting business on this property" or similar language which conveys the message that even if a business on the property was or will be frequented, if the operator leaves the property, the vehicle may be towed. This message shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

d. The name and telephone number of the towing and storage service at which a person available to release the motor vehicle that has been towed, removed, or immobilized may be contacted. The name and telephone number shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

e. Language such as “If a tow has been initiated but the vehicle has not been removed from the parking lot, the vehicle must be released upon payment of a release fee” or similar. This message shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-154. Report to police department required.

Any towing service that engages in a tow subject to this article must, within 15 minutes of removing the motor vehicle from the private property, report to the Cary Police Department by telephone communication the fact that a motor vehicle was towed. The tow service must also provide the police department with (i) a description of the motor vehicle including make, color, and license tag number; (ii) the location from where the motor vehicle was towed; and (iii) the location of the storage lot where the motor vehicle is intended to be held.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-155. Response time; towing receipt required; methods of payment.

(a) The towing or storage service shall maintain a telephone number for the purpose of receiving calls from the owners or operators of towed motor vehicles. Calls to the telephone number (i) shall be immediately answered by a person; or (ii) a call back shall be initiated, by a person, within 30 minutes of a message being left on voice mail or answering machine type device. A person with the authority and ability to release the motor vehicle shall respond to the location of the vehicle within two hours of a request for release being made during a phone call or by voice mail or answering machine message; unless (i) the request for release is made between the hours of 12:00 a.m. and 6:00 a.m. and (ii) the motor vehicle was towed more than two hours before the request for release was made, in which case a person with the authority and ability to release the motor vehicle shall respond to the location of the vehicle at or before 8:00 a.m.

(b) The towing or storage service shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:

(1) The name, address, and telephone number of the towing service.

(2) Sufficient information to allow the employee who towed the motor vehicle to be identified.

(3) A total fee with a breakdown of towing and storage fees.

(4) A clear and accurate reason for the towing and the date and time of the towing. Receipts shall not use descriptions that might cause individuals to associate private property towing with municipal action.

(c) The towing or storage service shall accept as payment for any fees related to towing regulated by this Ordinance (i) cash; and (ii) either MasterCard or Visa; and (iii) one other nationally recognized credit or debit card (such as MasterCard, Visa, American Express, Discover, or JCB).
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-156. Release prior to tow; retrieval of personal property.

(a) Any tow service that has initiated a tow subject to this Ordinance by, at a minimum, positioning a tow truck or wrecker in preparation for securing the motor vehicle to the tow truck by a hook, chain, cable, or similar device, but has not removed the motor vehicle from the private parking lot, must upon request of the motor vehicle operator, release the motor vehicle upon payment of a release fee.

(b) Any towing or storage service subject to this article shall, upon request of the motor vehicle owner or operator, permit the motor vehicle owner, operator, or designee to have access to the motor vehicle for the purpose of retrieving personal property from the motor vehicle.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-157. Regulations for tow storage lots.

(a) The tow storage lot shall be located within 15 miles of the parking lot from which the motor vehicle is towed.

(b) Tow storage lots shall be clearly signed in accordance with all applicable local and state requirements, stating the name, address, and telephone number of the tow storage lot. Tow storage lots shall be secured and lighted in such a manner as to keep the motor vehicle safe from break-ins or damage while in storage. The storage yard shall be fenced and have surface lighting sufficient for transacting nighttime business.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-158. Violations; responsible party.

Failure to conduct a tow in compliance with the requirements of this Article IV is a violation of this Article IV. In addition, it is a violation of this Article IV to:

(a) conduct a non-consensual tow from a private parking lot that is not properly posted pursuant to section 20-153;

(b) to engage a towing company to conduct non-consensual towing from a private parking lot if the private parking lot is not properly posted pursuant to section 20-153; or

(c) to engage a towing company that does not meet the requirements of this Article IV to conduct non-consensual towing from a private parking lot.

Any person or towing company who conducts a non-consensual tow in violation of this Article IV, and any person who engages a towing company in violation of this Article IV, may be charged with violation of this Article IV. A person shall be deemed to have engaged a towing company if that person owns, manages, or operates any private parking lot, or portion thereof, from which a towing company performs non-consensual tows.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-159. Penalties.

(a) *Civil penalty.* Violation of this Article IV shall subject the offender(s) to a civil penalty in the amount of $100.00. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: $250.00
Third offense within one year: $500.00
Fourth offense within one year: $750.00
Fifth and any subsequent offense within one year: $1,000.00

(1) Once the one year period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new one year period.

(2) Violators shall pay any issued penalty within 72 hours of the issue date and time. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. A police officer may issue a citation for violations of this article.

(3) Appeal of a civil penalty amount may be made to the Town Manager or designee within 30 calendar days from the date of issuance by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the penalty or fine, the Town Manager or designee may consider the following:

a. the gravity of the violation;

b. any action taken by the violator to correct the violation;

c. the cost of the action to correct the violation; and

d. any previous violations committed by the violator, on the same or different site.

(b) *Remedies.* This article may also be enforced through equitable remedies issued by a court of competent jurisdiction.

(c) *Criminal penalty.* In addition to, or in lieu of, such civil penalties or other remedies, violation of this article shall constitute a misdemeanor.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Chapter 21

RESERVED

Chapter 22

OFFENSES AND MISCELLANEOUS PROVISIONS*

Article I. In General

Sec. 22-1. Placing advertising in motor vehicles.
Sec. 22-2. Heavy articles; unloading on buffer.
Secs. 22-3—22-22. Reserved.

Article II. Offenses Involving Property Rights

Sec. 22-23. Damage to flowers, trees and shrubs.
Secs. 22-24—22-49. Reserved.

Article III. Offenses Involving Public Safety

Sec. 22-50. Electric fences.
Sec. 22-51. Prohibition of the carrying and display of handguns, firearms and other weapons at certain public locations.
Sec. 22-52. Discharging firearms or other guns.
Sec. 22-53. Graffiti.
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Article IV. Offenses Involving Public Peace and Order

Division 1. Generally

Sec. 22-78. Disturbing public meeting.
Sec. 22-79. Consumption and possession of malt beverages and unfortified wine on town property and town streets.
Sec. 22-80. Hotel guest registration.
Sec. 22-81. Safe and orderly use of public transportation system.
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Sec. 22-102. Statement of purpose and intent; loud, disturbing noises prohibited, generally.
Sec. 22-103. Definitions.
Sec. 22-104. Noise measurement.
Sec. 22-105. Exceptions.

***State law references—**Criminal law, G.S. Ch. 14; general welfare power of municipalities, G.S. § 160A-174.

Sec. 22-106. Prohibited sounds.
Sec. 22-107. Sounds impacting residential life.
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Sec. 22-109. Amplified sound.
Sec. 22-110. Permits.
Sec. 22-111. Responsible party.
Sec. 22-112. Enforcement and penalties.

ARTICLE I. IN GENERAL

Sec. 22-1. Placing advertising in motor vehicles.

No person shall distribute handbills, circulars, dodgers, pamphlets, cards, pictures or any advertising matter of any kind by placing the same in or upon any motor vehicle standing or parked in the streets or other public places except in a manner that will prevent them from being blown about or scattered by the elements.
(Code 1976, § 10-24; Code 1982, § 11-1)

Sec. 22-2. Heavy articles; unloading on buffer.

No person shall push, roll, drag over, unload, drop or throw onto any street or sidewalk any object, box, barrel, case or any article of sufficient weight to be injurious to the street or sidewalk without preparing a suitable buffer of sufficient size and thickness to prevent damage.
(Code 1976, § 14-48; Code 1982, § 12-143)

Secs. 22-3—22-22. Reserved.

ARTICLE II. OFFENSES INVOLVING PROPERTY RIGHTS

Sec. 22-23. Damage to flowers, trees and shrubs.

Any person desiring to remove, destroy, cut, or severely prune, including the root system, any tree or shrub in or upon any public street right-of-way or public property owned by the town, shall first obtain the permission of the director of public works or designee. Such permission shall be granted upon a showing that such work is necessary for other permitted projects or for preservation of public safety. Any work performed must be done in strict compliance with the conditions set forth in granting such permission, except permission shall not be required for the development of any property for a site plan, as required under the land development ordinance. Individual permission shall not be required of public and private utilities, including CATV installations and water and sewer regulations by or at the direction of the town, provided that the company's written pruning and trenching specifications have first been received and approved by the director of public works.
(Code 1976, § 10-17; Code 1982, § 13-2; Ord. No. 87-104, § 1, 12-10-1987; Ord. No. 92-25, § 1, 2-13-1992; Ord. No. 2019-Code-04, 10-10-2019)

Secs. 22-24—22-49. Reserved.

ARTICLE III. OFFENSES INVOLVING PUBLIC SAFETY

Sec. 22-50. Electric fences.

No person shall erect, install or construct, operate or maintain, or allow the installation or operation of a fence or similar structure or device which is electrically charged, within the corporate limits.
(Code 1976, § 10-6; Code 1982, § 13-9)

Sec. 22-51. Prohibition of the carrying and display of handguns, firearms and other weapons at certain public locations.

(a) *Concealed handguns.*

(1) *Possession prohibited.* No person shall carry a concealed handgun in town-owned buildings, on the appurtenant premises of those buildings, or in town recreational facilities as defined by G.S. 14-415.23, which are all town athletic fields and athletic facilities. A list of recreational facilities shall be set out in a Schedule of Recreational Facilities at which Concealed Handguns are Prohibited which shall be updated as necessary and retained permanently in the office of the Director, Parks, Recreation and Cultural Resources. Notwithstanding the foregoing, nothing in this section shall prohibit a concealed handgun permittee from securing the handgun within an enclosed compartment of a locked motor vehicle.

(2) *Posting required.* The director of public works or designee is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each recreational facility and each building and the grounds and parking areas of such buildings owned, leased as lessee, operated, occupied, managed or controlled by the town, as well as any other appurtenant premises to such buildings, indicating that carrying a concealed handgun on the properties and locations described in this section is prohibited therein and thereon unless specifically permitted or authorized by state law or the provisions of the town's code of ordinances. The director of public works or designee shall exercise discretion in determining the number and appropriate location of signs to be placed.

(b) *Other firearms and weapons.*

(1) No person shall display any firearm in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks and recreation areas, including town greenways. On all other public property within the town, including public streets, alleys, and sidewalks, display of firearms shall comply with the following:

(a) no firearms other than handguns, as defined in G.S. 14-409.39, may be displayed;

(b) the handgun shall be holstered such that firing of the weapon is not possible;

(c) the handgun shall be clearly visible and not concealed or partially concealed;

(d) display of handguns is prohibited for any person while consuming alcohol or at any time while the person has remaining in the person's body any alcohol or in the person's blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in the person's blood was lawfully obtained and taken in therapeutically appropriate amounts;

(e) display of handguns is prohibited on any public streets, including adjacent sidewalks, that have been closed by the chief of police or designee pursuant to Section 34-74; and

(f) display of handguns is prohibited within the area and boundaries of the Lazy Daze Arts & Crafts Festival during the times listed in Section 24-18, and within the area and boundaries of any other town-sponsored event to which the provisions of Section 24-18 are made to apply by the town council.

(2) No person shall display any deadly weapon as defined in G.S. 14-269(a), or any knife having a blade of three inches or longer, BB gun, air gun, paintball gun, airsoft gun, bow and arrow or any type of lethal weapon, while on any public street, alley, sidewalk or other public property within the town, including town greenways, unless specifically permitted or authorized by law. No person shall carry or have possession of a knife having a blade of three inches or longer, a BB gun, air gun, paintball gun, airsoft gun, bow and arrow or any type of lethal weapon in any park, including town greenways.

(3) This subsection (b) is not applicable to concealed handguns, which are governed by subsection (a) above.

(c) *Exceptions.* The possession or display of a firearm or other weapon is exempt from the provisions of this section 22-51 in the following situations:

(1) If the chief of police, or designee, has authorized the public possession or display of a firearm, or other weapon, as part of an official program or event sponsored or sanctioned by the town.

(2) If the possession or display of the firearm, or other weapon, was the result of an individual(s) exercising his or her legitimate right to self defense or the defense of others as allowed by law.

(3) If the possession or display of the firearm, or other weapon, was conducted by a person(s) authorized by law to carry and display such items as part of their official or otherwise recognized lawful duties (e.g., law enforcement officers, military personnel, security guards, etc.).

(4) If the possession or display of the firearm, or other weapon, was necessary for the temporary transport and securing of the item and was not otherwise in violation of existing statutes or ordinances (e.g., recent purchase and movement to vehicle for transport, securing of firearm by CCH permit holder in vehicle, found item to be turned in to authorities, firearm in approved vehicle gun rack, etc.).

(5) The possession or display of a knife with a blade longer than three inches in Symphony Lake park property and Fred G. Bond Metro Park when used for fishing purposes only.

(6) The possession or display of a knife with a blade longer than three inches for the performance of the duties of a town employee or contractor.

(d) *Violation.* The carrying of concealed handguns or the possession or display of any firearm or other weapon as defined in this section, in or upon any of the locations specified by this section, shall constitute a misdemeanor and subject any violator(s) so convicted to such penalties as may be imposed by the court.

(Code 1982, § 13-9.1; Ord. No. 95-031, 12-14-1995; Ord. No. 01-010, 5-24-2001; Ord. No. 06-010, 6-22-2006; Ord. No. 2011-Code-08, 11-17-2011; Ord. No. 2013-Code-03, 9-12-2013)

State law reference—Local regulation of firearms, G.S. 14-415.23; 14-409.40; 160A-189.

Sec. 22-52. Discharging firearms or other guns.

(a) No person shall fire or otherwise discharge any type of firearm, air gun, gun or pistol, or any spring gun, pistol, or other similar device which impels with force any projectile, shot or pellet of any kind within the corporate limits, unless:

(1) Such firing or discharge is made pursuant to an approved recreational or instructional program supervised by competent authority acceptable to either the director of parks and recreation or the chief of police; or

(2) When lawfully used in defense of person or property or pursuant to lawful directions of law enforcement officers.

(b) Police officers performing official duties are exempt from the provisions of this section.

(c) It shall be unlawful to discharge a bow and arrow or crossbow within the town limits unless carried out under the following restrictions and conditions:

(1) If used for target shooting, the arrows must be discharged into an archery backstop made for the purpose of stopping arrows. A safety buffer of 1,000 feet in a straight line from the archer is required within the incorporated area of the Town of Cary.

(2) Must be 18 years of age or in the company of a parent or guardian.

(3) For a bow and arrow or crossbow to be considered under this Code, it must have a draw strength of nine pounds or more. Anything less would be a toy and not considered under this Code.

(Code 1982, § 13-9.2; Ord. No. 96-002, 2-8-1996; Ord. No. 05-017, 11-10-2005)

State law reference—Local regulation of firearms, G.S. 14-409.40.

Sec. 22-53. Graffiti.

(a) *Definitions.* The following definitions shall apply to this section.

Graffiti means any inscription, word, writing, drawing, figure, mark of paint, ink, chalk, dye or other similar substance, etching, engraving or other defacement (collectively 'defacement') by a graffiti implement or chalk or by the application of any material, gum label, paper, fabric or other matter (collectively "matter") with adhesive or other substance which is intended to make the application of the matter permanent or difficult to remove, on public or private property. Graffiti does not include temporary, easily removable chalks or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.

Graffiti implement means any aerosol paint container or paint applicator or brush, indelible marker containing ink or other pigmented liquid that is not water soluble, stick on label, paint stick, etching equipment or any other device capable of defacing or leaving a visible mark on public or private property.

Paint means paint, wax, epoxy or similar substance capable of being applied to a surface and leaving a defacement.

Property owner(s) means the owner as defined in section 1-2 and such owner's agent or manager, or any other person in lawful control or possession of property if known to the town. The owner of the property shall be deemed to be those persons whose names appear on the tax records as having an interest in the property.

Public or *private property* means public or private buildings, sidewalks, streets, structures, walls, equipment and other similar things and places.

(b) *Placing graffiti prohibited.* It shall be unlawful for any person to place graffiti upon the surface of any public or private property.

(c) *Removing graffiti required.*

(1) *Removal by perpetrator.* It shall be unlawful for any person placing graffiti on public or private property to fail to remove such graffiti or cause such graffiti to be removed within seventy-two (72) hours after notice from the town. If graffiti is applied by a person under the age of eighteen (18) years of age, the parents or legal guardians of such minor shall be responsible for removal of the graffiti with seventy-two (72) hours after notice from the town.

(2) *Removal by property owner.* It shall be unlawful for any property owner to fail to remove or effectively obscure any graffiti upon property they own, manage, or are in lawful control or possession of within five (5) business days after receiving written notice from the town to remove such graffiti ("Notice to Remove"). Notice to Remove shall be sent by certified mail, return receipt requested or by personal delivery, to the property owner(s). The notice to remove shall provide:

(i) the street address or other description of the property sufficient for property identification;

(ii) a description and general location of the graffiti;

(iii) a statement that the property is a public nuisance due to the existence of the graffiti;

(iv) a statement that the graffiti must be removed or effectively obscured within five (5) business days after receiving notice to remove and that if the nuisance is not so abated within that time the town will abate the public nuisance at the cost of the property owner as set forth herein;

(v) information identifying any graffiti removal assistance available through the town; and

(vi) information concerning procedures for appeal of the Notice.

(3) *Removal by town.* If the town has provided notice to remove under (c)(2) above and property owner fails or refuses to remove or effectively obscure graffiti upon their property, then, in addition to other enforcement actions hereunder, the town is authorized to remove the graffiti as provided herein at the expense of property owner. If the expenses of removing or obscuring the graffiti is not paid by the property owner within thirty (30) days of receipt of a statement for the cost of such removal or obscuring, the town may sue in a court of competent jurisdiction to recover all such expenses, including all administrative personnel costs, attorney's fees and costs related to enforcing this section, and the town may record a lien in the public records of Wake County, which lien shall be for all such expenses, and the amount of the lien shall bear interest from the date of recording.

(4) *Appeals.* Any property owner who receives a notice to remove may appeal the notice within five (5) business days of receipt of notice to the town manager. The appeal shall be in writing and shall state with specificity the reasons for the appeal ("appeal notice"). The manager or designee shall set a hearing date within ten (10) days of receipt of the appeal notice, and shall render a decision within a reasonable time after the hearing date. If, on appeal, the manager or designee determines that the graffiti is a public nuisance and must be removed, the manager shall establish a new date for such removal or obscuring.

(5) *Emergency removal.* If the town determines that any graffiti is a danger to the health, safety or welfare of the public and is unable to provide notice by personal service after at least two attempts to do so, then forty-eight (48) hours after either (i) mailing of the notice described in subsection (2) above by certified and first class mail or (ii) the posting of the notice in a conspicuous place on the property, the town may remove or cause the graffiti to be removed or obscured at its expense.

(6) Removal/obscuring. The town shall not clean, paint or obscure or repair any property containing graffiti more extensively than where the graffiti itself is located. The town shall not be required to restore the area that contained graffiti, or any obscured area, to its original condition including conditions of color, texture, and finish. Notwithstanding the preceding, if the town manager determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, the Town of Cary or its authorized private contractor is expressly permitted to perform the work necessary to do more extensive repainting or repairing.

(d) *Enforcement/remedies.*

(1) *Civil penalties.* Violation of subsections (b), (c)(1), or (c)(2) shall subject the offender(s) to a civil penalty in the amount of one hundred dollars ($100.00). In the event there is more

than one violation within any thirty-day period, then the civil penalty shall be increased for each additional violation over one during such period, as follows. The date of the first violation shall establish the beginning date for the initial thirty-day period. The next violation within that 30-day period shall be considered the second violation. Any violations that follow within that thirty-day period shall be numbered sequentially. The penalty shall be:

Second offense within same thirty-day period: $250.00.

Third offense within same thirty-day period: $500.00.

Fourth offense within same thirty-day period: $750.00.

Fifth and any subsequent offense within same thirty-day period: $1,000.00.

Once the thirty-day period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new thirty-day period. Each subsequent violation that follows more than thirty (30) days from the previous first violation shall be a new first violation for the purpose of establishing a new thirty-day period. In the event there are more than six violations within any twelve-month period, then each violation after six shall subject the violator(s) to a civil penalty of one thousand dollars ($1,000.00).

Violators shall be issued a written citation which must be paid within seven (7) days from the issue date and time to the Town of Cary Finance Department. The town is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. Any police officer may issue a citation for violations of this article.

(2) *Criminal penalty.* In addition to or in lieu of civil penalties or other remedies, violation of subsection (b) of this section shall constitute a misdemeanor. Any person convicted of a violation of this section shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and five hundred dollars ($500.00) for a second or subsequent offense. In addition to any other remedy, the court shall order any person convicted of a violation of subsection (b) to make restitution to the victim and/or to the Town of Cary for the damage or loss suffered by the victim and/or to the Town of Cary as a result of the offense. The court may determine the amount, terms, and conditions of the restitution.

(e) *Right of entry on private property.* Prior to entering upon private property or property owned by a public entity other than the Town of Cary for the purpose of this section, the town shall make a reasonable attempt to secure the consent of the property owner or manager for release of the town from liability for property damage or personal injury. If the property owner or manager fails to remove the offending graffiti within the time specified herein, or the town has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the town and consistent with the terms of this section, the town shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified herein.

(f) *Severability.* The provisions of this section shall be deemed severable. If any portion of this section is deemed unconstitutional, it shall not affect the constitutionality of any other portions of this ordinance.
(Ord. No. 06-021, 12-14-2006)

Secs. 22-54—22-77. Reserved.

ARTICLE IV. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

DIVISION 1. GENERALLY

Sec. 22-78. Disturbing public meeting.

No person shall disturb any public meeting or exhibition, whether held in a house or out of doors, in any manner whatsoever.
(Code 1976, § 10-1; Code 1982, § 13-6)

State law references—Disorderly conduct, G.S. 14-288.4; disruption of official meetings, G.S. 143-318.17.

Sec. 22-79. Consumption and possession of malt beverages and unfortified wine on town property and town streets.

(a) *Definitions.* The following definitions shall apply in the interpretation and enforcement of this section:

ABC permit means any permit required by the North Carolina Alcoholic Beverage Control Commission or any successor agency.

Malt beverage means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume.

Open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container.

Public street means any streets, sidewalks, alleys, bridges and other ways of public passage within the town's corporate limits.

Town property means any property owned, occupied, or controlled by the town, excluding the public streets.

Town sponsored or co-sponsored event means a celebration, festival, activity, or other event which is sponsored wholly or in part by the Town.

Unfortified wine means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry,

rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(b) *Possession and Consumption on Public Streets.* It shall be unlawful for any person to possess an open container of or consume malt beverages or unfortified wine on any public street, except that such possession and consumption shall be permitted within the area encompassed by a valid encroachment agreement granted by the town which includes the permission for such possession or consumption ("outdoor consumption area"), so long as appropriate ABC permits are in effect. Possession or consumption of malt beverages and unfortified wine are not permitted in outdoor consumption areas located within the area described in Code Section 24-18(b)(1) on the scheduled day of Lazy Daze, or its rain date, if necessary.

(c) *Possession and Consumption on Town Property.* It shall be unlawful for any person to possess an open container of or consume malt beverages or unfortified wine on town property, except that such possession and consumption shall be permitted on town property if appropriate ABC permits are in effect and (i) in connection with Town sponsored or co-sponsored events; (ii) pursuant to a written agreement between the town and a concessionaire; (iii) pursuant to the terms of a lease or rental agreement for a town facility; or (iv) at the Cary Arts Center, the Cary Downtown Theater, the Koka Booth Amphitheatre, or the Soccer Park, when the malt beverages or wine are provided by the Town, a vendor, or a concessionaire.

(d) *Possession and Consumption during Special Events.* It shall be unlawful to possess or consume malt beverages and unfortified wine on any public street, alley or parking lot which is temporarily closed to regular traffic for a special event unless (i) the special event is a Town sponsored or co-sponsored event located with the Town Center zoning district and for which the Town makes malt beverages or unfortified wine available for purchase; or (ii) a resolution of the town council makes other provisions for the possession and consumption of malt beverages or unfortified wine for the special event on the closed street, alley or parking lot.

(e) *Exception.* This Section does not apply to persons who are occupants of a motor vehicle. (Code 1976, § 10-4; Code 1982, § 13-8; Ord. No. 87-104, § 3, 12-10-1987; Ord. 2015-Code-01, 1-28-2015)

Sec. 22-80. Hotel guest registration.

(a) *Definitions.*

Innkeeper. Any person engaged in the ownership or operation of hotels, motels, inns, tourist homes, tourist camps and similar types of businesses and persons who rent private residences and cottages to transients (hereafter jointly "hotel"). The term innkeeper includes the proprietor or any other person who has the right to rent rooms within the hotel including clerks and other employees and agents of the hotel owner or operator.

Guest. Any person renting or otherwise using or inhabiting a sleeping room or living room unit in a hotel.

(b) *Numbering of rooms.* Every innkeeper shall at all times number and designate all sleeping room or living room units in the hotel in a plain, conspicuous manner. Such number or designation

shall be placed on the outside of each sleeping room or living room unit, and no two units shall bear the same number, unless also clearly designated as to building, wing, or other identifier.

(c) *Guest register.* Every innkeeper shall at all times keep and maintain on the premises of hotel a guest register in which shall be inscribed the name and home address of each guest and shall contain such guest's vehicle description and license plate state and number.

Upon registration, the innkeeper shall require all guests to provide a valid driver's license or identification card from within the U.S., Canada or U.S. Territories, U.S. Military identification, or a valid passport. The corresponding identification number and type of identification shall be recorded in the register.

The innkeeper shall write opposite each guest name the number of each room or unit assigned to and occupied by such guest, together with the date when such room or unit is rented, and shall sign the register. No person shall be allowed to occupy any sleeping room or living room unit in a hotel unless all of the aforesaid entries have been made in such guest register.

(i) The innkeeper shall keep and maintain all guest registers in a manner that provides quick and easy reference to the number of each room or unit assigned, and the name of the guest assigned to that room or unit, together with the date when such room or unit is rented.

(ii) The information required by this section shall be maintained by the innkeeper for one year from the date of rental. An officer of the Town of Cary Police Department ('Officer') may request to inspect the guest register as part of the Police Department's public safety responsibilities by asking the innkeeper's consent to inspect the guest register. If such inspection is refused, the innkeeper must secure the guest register in the presence of the Officer in a manner directed by the Officer to ensure that no one can tamper with the guest register and the innkeeper must maintain the security of the guest register until such time as a subpoena, warrant, or court order has been issued or denied.

(iii) The guest vehicle parking area of any hotel shall be accessible in a reasonable manner at all times to any law enforcement officer or by an official of the Fire Department with territorial jurisdiction while in the performance of his or her duties.

(Ord. No. 06-019, 12-14-2006; Ord. No. 2015-Code-006, 11-19-2015)

Sec. 22-81. Safe and orderly use of public transportation system.

(a) The Town of Cary owns and operates a public transportation system (“System”). To ensure the safety, security, comfort and convenience of all persons using System the following conduct is prohibited on all real and personal property and equipment of, or used by, System in the provision of System services (collectively, “Facilities”). Prohibited conduct is intentional or willful and wonton conduct that:

(i) is illegal under any federal, state, or local law, regulation, or ordinance;

(ii) damages any Facilities or property of System employees or passengers, or any other person using System services;

(iii) injures a System employee, any passenger, or any other person; or

(iv) substantially interferes with or tends to interfere with System services or Facilities.

(b) The town manager, or the manager's designee, is authorized to establish and, from time to time, amend a "Code of Conduct" that further defines prohibited conduct and other adequate and reasonable rules to protect and regulate those who use System.

(c) The Code of Conduct is hereby incorporated by reference pursuant to G.S. 160A-76(b) and shall be as effective as if set out in full herein.

(d) The Code of Conduct shall apply to the System both within and outside the corporate limits of the Town, and may be enforced with the remedies available under any provision of law.

(e) An official copy of the Code of Conduct shall be maintained for public inspection in the office of the Town Clerk.
(Ord. No. 2017-Code-02, 2-23-2017)

State law references—G.S. 160A-312; 160A-76.

Secs. 22-82—22-101. Reserved.

DIVISION 2. NOISE*

Sec. 22-102. Statement of purpose and intent; loud, disturbing noises prohibited, generally.

The provisions hereinafter contained are enacted for the purpose of preventing noise disturbances or unreasonably loud noise and are enacted pursuant to the authority granted in G.S. § 160A-184. Above certain levels or durations and during specific times of day, unreasonably loud noise or noise disturbance is detrimental to health, safety and welfare of the citizenry and the individual's right to peaceful and quiet enjoyment. It is the policy of the town to prohibit noise disturbances or unreasonably loud noise from all sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Cary. Nothing in this Article IV, Division 2 is intended to deter individuals from lawfully exercising the individual right of freedom of speech and commerce, or any other freedom guaranteed under the Constitutions of the United States of America or of the State of North Carolina, and nothing in this Article IV, Division 2 is intended to unreasonably limit or restrain commercial or industrial enterprise.

Subject to the provisions of sections 22-104 through 22-112, it shall be unlawful for any person to create or assist in creating any unreasonably loud, disturbing noise in the town which does frighten, annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of citizens within the Town of Cary or causes damage to property or business within the Town of Cary. Such sounds do not include the ordinary and usual sounds, noises, commotion or vibration incidental to residential living or operation of business or commercial establishments when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business.
(Code 1982, § 13-10; Ord. No. 93-29, 5-13-1993; Ord. No. 98-008, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-103. Definitions.

For the purpose of this division, the following words and phrases are defined below unless it shall be apparent from the context that a different meaning is intended:

Construction shall mean on-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility or addition thereto, including all related activities including, but not restricted to, clearing of land, earth moving, blasting, landscaping, mixing or pouring concrete, and the operation of vehicles or equipment in connection with such activities.

Disturbing noise shall mean noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of an area.

Emergency work shall mean any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

***State law reference—**Authority to regulate noise, G.S. § 160A-184.

Motor vehicle or vehicle shall mean any vehicle propelled on land by a motor, including, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, automobiles, motorcycles or buses. It shall exclude trains and emergency response vehicles such as police, fire and rescue vehicles.

Noise control officer shall mean any police officer or other person so designated by the town manager.

Occupied residential structure shall mean any structure that is occupied for residential use or that reasonably appears to be occupied for residential use; it is not necessary that a person be inside the structure at the time an unreasonably loud or disturbing noise is caused or created.

Person shall mean any individual, association, partnership or corporation, including any officer, employee, department, agency or instrumentality of the United States, the state or any political subdivision thereof.

Unreasonably loud noise shall mean noise which is substantially incompatible with the time and location where created or heard to the extent that it brings about an actual or imminent interference with peace, rest, or good order.

Technical terms:

(1) *A-weighted sound level:* The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

(2) *Decibel (dB):* A unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

(3) *Sound:* An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression, and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(4) *Sound pressure level:* 20 times the logarithms to the base 10 of the ratio of the root mean squared (RMS) sound pressure to the reference pressure of 20 micronewtons per square meter.

(5) *Sound-level meter:* An instrument which includes a microphone, amplifier, RSM detector, integrator or time average, output meter and weighting network used to measure sound pressure levels.

(6) *Sound level:* The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute Specifications for sound level meters (ANSI S1.41971 or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(7) *Slow response:* A measuring technique to obtain an average value when measuring a noise level that fluctuates over a range of four dB or more. By way of illustration only, a sound level meter set on "slow response" would record a sound level between two and six decibels less than the reading for a steadying signal of the same frequency and amplitude when a tone of 1,000 Hz and for a duration of 0.5 seconds is applied.

(8) *Amplified sound:* Any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside or to other dwellings or interior locations under separate ownership or occupancy.

(Code 1982, § 13-11; Ord. No. 93-29, 5-13-1993; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-104. Noise measurement.

For the purpose of determining dB(A)'s as referred to in this article, sound levels shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute (ANSI) or its successor body.

All measurements shall be taken at or within the nearest residential property line occupied by the complainant, unless otherwise stated. For multifamily structures, including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined or do not exist, measurements shall be taken:

(1) from any point abutting the exterior of the complainant's residential unit; or

(2) from any point on the interior of the complainant's residential unit if taking an exterior measurement is impractical or if the noise complained of is emanating from an adjoining unit.

The sound measurement shall be averaged over a period of one minute for purposes of determining the sound level (the "measurement period"). It shall be a violation of this ordinance for the averaged sound measurement to exceed the prescribed dB(A), or for any sound or noise to exceed the prescribed dB(A) level by three or more decibels at any time during the measurement period.

(Code 1982, § 13-12; Ord. No. 93-29, 5-13-1993; Ord. No. 2013-Code-05, 10-10-2013; Ord. No. 2015-Code-004, 7-9-2015)

Sec. 22-105. Exceptions.

The following acts and activities are exempt from the provisions of this article unless such acts produce a risk of serious and unnecessary bodily harm:

(1) *Emergency Work.* Emergency work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril. This emergency exception includes maintenance, backup or upkeep ("maintenance") strictly necessary to keep emergency equipment, such as generators, in operating order as prescribed by the manufacturer, provided such maintenance is done only on weekdays between the hours of 9:00 a.m. and 4:00 p.m., sounds created do not exceed 80 dB(A), the equipment is maintained as far from the property line as reasonably possible to serve its purpose, and the equipment has all the manufacturer's standard mufflers and noise-reducing equipment intact.

(2) *Athletic Events.* Sound emanating from outdoor athletic events scheduled by the Town; educational, religious, or other institutions; or organized sports leagues.

(3) *Safety Signals.* Noise of safety signals, warning devices, and emergency pressure relief valves, provided such signals are used in a manner consistent with promoting public health and safety.

(4) *Religious Bells.* Noise resulting from the operation of religious bells or chimes.

(5) *Emergency Vehicles.* Noise resulting from any authorized emergency vehicle.

(6) *Public Demonstrations.* Noise resulting from parades, lawful picketing or other public demonstrations protected by the U.S. Constitution or federal law, or for which a local permit has been granted by the town, provided such activity is of a temporary duration lasting no longer than two hours during any 24-hour period. Regulation of noise emanating from activities under permit shall be according to the conditions and limits stated in this Article IV, Division 2 and according to any additional conditions stated on the permit.

(7) *Town Sanctioned or Sponsored Events.* Unamplified and amplified sound at street fairs community concerts, other celebrations and events, provided that such event is sponsored or sanctioned by the town.

(8) *Noisemakers and Pyrotechnics.* Noise from noisemakers on holidays and fireworks on holidays or at times allowed under a pyrotechnics permit issued pursuant to G.S. ch. 14, art. 54 (G.S. 14-410 et seq.).

(9) *Aircraft.* All noises coming from the normal operations of properly equipped aircraft, but not including scale model aircraft.

(10) *Lawn Mowers and Landscaping Equipment.* Lawn mowers, landscaping equipment, and agricultural equipment used between the hours of 7:00 a.m. and 9:00 p.m. on Monday through Friday and between the hours of 9:00 a.m. and 9:00 p.m. on Saturdays and Sundays when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition. Typical and routine work to ready a golf course for play beginning at 6:00 a.m. during the months of April through September and at 7:00 a.m. during the months of October through March. Typical and routine work includes the mowing, blowing and raking of all of the course's playing surfaces, using equipment operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition. Typical and routine work does not include the use of chainsaws, chippers, shredders or equipment that is used on a sporadic, irregular basis.

(11) *Marching Bands.* Practice sessions or performances by marching bands.

(12) *Railroads.* Noise from trains and associated railroad rolling stock when kept in proper repair and operated in a proper manner.

(13) *Operations of Local Government Employees.* Noise created by the normal operations of the town government, including the work of its contractors.

(14) *Unamplified Recreational Noise.* Unamplified sound originating from recreational activities at public or private recreational, civic or community clubs, and religious institutions, when such noise is created by patrons and/or guests during the legitimate operation of the establishment between the hours of 7:00 a.m. through 9:00 p.m.

(15) *Refuse Collection.* Operating a front-end loader or other truck for refuse collection Monday through Saturday between the hours of 7:00 a.m. and 8:00 p.m.

(16) *Construction Work.* Performing construction work or operating construction machinery Monday through Friday between the hours of 7:00 a.m. and 6:00 p.m. or between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays and holidays which are observed by the state.

(17) *Garages.* Noises created by the ordinary business activities of garages or service stations between the hours of 7:00 a.m. and 9:00 p.m.

(Code 1982, § 13-18; Ord. No. 93-29, 5-13-1993; Ord. No. 94-022, § 2, 8-11-1994; Ord. No. 05-003, 2-24-2005; Ord. No. 05-004, 3-10-2005; Ord. No. 2013-Code-05, 10-10-2013; Ord. No. 2015-Code-004, 7-9-2015)

Sec. 22-106. Prohibited sounds.

The following actions are hereby declared to be unreasonably loud and disturbing noise in violation of section 22-102, except as provided in section 22-105. This enumeration shall not be construed to be an exclusive list of actions which violate section 22-102, nor shall satisfying any requirements of this section render a sound in itself reasonable:

(1) *Horns or signal device.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other motor vehicle, except as a warning or danger signal; the creation of any unreasonably loud or harsh sound by means of any such horn or signal device, whether or not such device is on any vehicle, and the sounding of any such device for an unnecessary and unreasonable period of time.

(2) *Gongs, bells, and sirens.* The use of any gong, bell or siren upon any motor vehicle.

(3) *Steam whistle.* The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.

(4) *Exhaust discharge.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motor boat engine, except through a muffler or other device which effectively prevents unreasonably loud and disturbing or explosive sounds therefrom.

(5) *Compressed air devices.* The use of any mechanical device operated by compressed air unless the sounds created are effectively muffled and reduced.

(6) *Chimes, bells, gongs, attached to buildings.* The sounding of any chime, bell or gong attached to any building or premises which disturbs the quiet or repose of any person in the vicinity thereof.

(7) *Vendors.* The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of a residential neighborhood.

(8) *Pyrotechnics.* The firing, discharge or ignition of squibs, firecrackers, gunpowder or other pyrotechnics, except with a permit as set forth in section 22-110.

(Code 1982, § 13-13; Ord. No. 93-29, 5-13-1993; Ord. No. 06-020, 12-14-2006; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-107. Sounds impacting residential life.

Except as provided in sections 22-105 (exceptions) or 22-109 (relating to amplified noise), it shall be unlawful for anyone to create or cause a sound that exceeds 60 dB(A) affecting any occupied residential structure or unit other than the unit occupied by the person creating the sound.

(Code 1982, § 13-14; Ord. No. 93-29, 5-13-1993; Ord. No. 94-022, § 1, 8-11-1994; Ord. No. 05-003, 2-24-2005; Ord. No. 05-011, 8-11-2005; Ord. No. 2012-Code-03, 4-19-2012; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-108. Motor vehicles.

It shall be unlawful to operate or allow the operation of any motor vehicle in the town:

(1) By engaging in operations which create unreasonably loud and disturbing noises, or

(2) By playing any radio, tape player, compact disc player or other sound-making device or instrument from within the motor vehicle so that the sound is plainly audible 30 feet away from the vehicle. This subsection shall not apply to motor vehicles used for business or political purposes which, in the normal course of conducting business, use sound-making devices or sound-amplification equipment, so long as such devices or equipment do not register more than 60 dB(A) at or on the edge of the pavement.

(Code 1982, § 13-17; Ord. No. 93-29, 5-13-1993; Ord. No. 05-003, 2-24-2005; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-109. Amplified sound.

Except in accordance with a permit obtained from the town, or as provided in section 22-110, the following shall be unlawful:

(1) *Places of public entertainment.* As to places of public entertainment, including, but not limited to, restaurants, taverns and bars, coffeehouses and private clubs, to operate or allow the operation of any sound amplification equipment so as to create sounds registering more than 65 dB(A) affecting occupied residential structures or units between 9:00 a.m. and 9:00 p.m., or 55 dB(A) between 9:00 p.m. and 2:00 a.m., or 40 dB(A) between 2:00 a.m. and 9:00 a.m.

(2) *Advertising.* Operate or allow the operation of any sound amplification equipment for advertising purposes or otherwise to attract customers so as to cast sounds which are unreasonably loud and disturbing or which register more than 60 dB(A) at or on the boundary of the edge of pavement of any public right-of-way.

(3) *Public right of ways.* Operate or allow the operation for personal use of any sound amplification equipment on the public right-of-way, including streets or sidewalks, or in the public parks so as to produce sounds registering more than 60 dB(A) at any point 50 feet or more from any electromechanical speaker emitting sound between the hours of 9:00 a.m. and 9:00 p.m., or 50 dB(A) 50 feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.

(4) *Other Amplified Sounds.* As to sounds other than those listed in subsections (1)-(3) of this section, to operate or allow the operation of any sound amplification equipment so as to create sounds registering 60 dB(A) or greater affecting occupied residential structures or units between the hours of 9:00 a.m. and 9:00 p.m., or 50 dB(A) or greater between 9:00 p.m. and 9:00 a.m.

(Code 1982, § 13-15; Ord. No. 93-29, 5-13-1993; Ord. No. 98-009, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-110. Permits.

(a) *Application.* Application for a permit under section 22-106(8) or for additional amplification under section 22-109 shall be submitted in writing to the police department at least 15 working days in advance of the planned use. The application shall designate an individual person or persons who shall be:

(1) in control of the amplification in the case of a permit for section 22-109;

(2) in control of the firing or discharge of a gun or pyrotechnics in the case of a permit under section 22-106(8); and

(3) responsible for seeing that the activity complies with the terms of the permit.

(b) *Notice of tentative approval.* In the case of permits for additional sound amplification pursuant to section 22-109, if the permit is tentatively approved, the applicant shall be responsible for mailing or otherwise delivering to the occupants of each property within a 1,000-foot radius of the property or facility for which the permit has been granted, as shown on the county tax maps, a notice on a form provided by the noise control officer showing the date and hours of the event. The notice shall be delivered at least 72 hours in advance of the event. The permit will not be approved and issued by the town until the applicant submits an affidavit to the noise control officer confirming that such notices have actually been mailed or otherwise delivered.

(c) *Number of hours.* In the case of excess amplification under section 22-109, no permits shall be issued which shall have the effect of allowing more than 20 hours of excess amplification per year at any place of public entertainment or ten hours of excess amplification at any other location. Permits shall be tentatively approved and subsequently granted by the noise control officer in the order of receipt unless permits for 20 or more hours have previously been issued for the same or other locations within a 1,000-foot radius of the facility in the same calendar year, in which event the applicant shall elect whether to limit his request so as to keep the year's accumulated hours of excess amplification in that location between 20 hours or select another location.

(d) *Not permitted in residentially occupied boundaries.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 dB(A) at any point on or within the

boundary line of the nearest residentially occupied property. For multifamily structures, including apartments, condominiums, or other residential arrangements, and for structures where boundary lines cannot readily be determined or do not exist, measurements shall be taken from any point abutting the exterior of the residential unit.

(e) *Denial; exceptional permit.* If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, the applicant shall promptly submit a copy of the denied permit application together with a short statement of the reasons the applicant believes he is entitled to a permit to the town manager. The town manager shall have the discretion to grant an exceptional permit waiving locational, time, and/or dB(A) requirements, upon the determination by the town manager that the applicant has made a substantial showing of legal entitlement. Any such exception permit shall be promptly reported to the town council.
(Code 1982, § 13-16; Ord. No. 93-29, 5-13-1993; Ord. No. 05-003, 2-24-2005; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-111. Responsible party.

(a) Persons responsible for remedying any violation under this Article IV, Division 2 or to be held liable for any civil or criminal penalties under section 22-112 shall be any person who creates or assists in creating the unreasonably loud, disturbing noise or other violation. A person shall be deemed to create or assist in creating the unreasonably loud, disturbing noise or other violation if that person owns, manages, or operates any residence, business, or location at which the noise is generated.

(b) When the noise which violates this Article IV, Division 2 is emanating from a motor vehicle, the violator is the operator of the motor vehicle, and/or the employer of the operator if the motor vehicle is being used for commercial purposes, and/or the person which possesses or controls the motor vehicle used by the operator if the motor vehicle is being used for commercial purposes.

(c) When the noise which violates this Article IV, Division 2 is emanating from construction activities, the violator is the individual doing the activity and/or their employer, the general contractor for the site, or the owner of the property.
(Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-112. Enforcement and penalties.

(a) *Civil penalty.* Violation of this Article IV, Division 2 shall subject the offender(s) to a civil penalty in the amount of $100.00. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: $250.00

Third offense within one year: $500.00

Fourth offense within one year: $750.00

Fifth and any subsequent offense within one year: $1,000.00

(1) Once the one year period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new one year period.

(2) Violators shall pay any issued penalty within 72 hours of the issue date and time. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. A police officer, animal control officer enforcing subject matter jurisdiction, or other employee duly authorized to enforce the noise control ordinances may issue a citation for violations of this article.

(3) Appeal of a civil penalty amount may be made to the Town Manager or designee within 30 calendar days from the date of issuance by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the penalty or fine, the Town Manager or designee may consider the following:

(a) the gravity of the violation;

(b) any action taken by the violator to correct the violation;

(c) the cost of the action to correct the violation; and

(d) any previous violations committed by the violator, on the same or different site.

(b) *Remedies.* This article may also be enforced through equitable remedies issued by a court of competent jurisdiction.

(c) *Criminal penalty.* In addition to, or in lieu of, such civil penalties or other remedies, violation of this article shall constitute a misdemeanor.

(Code 1982, § 13-19; Ord. No. 93-29, 5-13-1993; Ord. No. 98-010, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

State law reference—Civil penalties, G.S. 160A-175(c).

Chapter 23

RESERVED

Chapter 24

PARKS, RECREATION AND CULTURAL RESOURCES*

Sec. 24-1. Definition.
Sec. 24-2. Temporary closing.
Sec. 24-3. Use of county school property.
Sec. 24-4. Written permission.
Sec. 24-5. Dates of operation.
Sec. 24-6. Hours of operation.
Sec. 24-7. Damage to plants, turf, rocks, structures, streams.
Sec. 24-8. Injuring or endangering wildlife.
Sec. 24-9. Dangerous equipment.
Sec. 24-10. Reserved.
Sec. 24-11. Swimming.
Sec. 24-12. Open fires.
Sec. 24-13. Vehicles.
Sec. 24-14. Livestock and domestic animals.
Sec. 24-15. Entertainment; demonstrations; exhibitions.
Sec. 24-16. Advertising matter; solicitations.
Sec. 24-17. Skateboarding safety equipment requirements.
Sec. 24-18. Lazy Daze and other specially designated town sponsored events; activities prohibited.

***State law reference—**Parks and recreation, G.S. 160A-350 et seq.

Sec. 24-1. Definition.

For the purpose of this chapter, "parks" shall be defined as all parks, greenways and open space areas owned, leased and/or operated, maintained and administered by the town of Cary department of parks and recreation and cultural resources.
(Code 1982, § 14-1; Ord. No. 80-14, § 10.1-1, 6-12-1980)

Sec. 24-2. Temporary closing.

The director of parks, recreation and cultural resources may temporarily close or curtail activities upon any park or waters, or any portions thereof, when it has been deemed to be in the best interest of public safety, health, conduct or order.
(Code 1982, § 14-4; Ord. No. 80-14, § 10.1-4, 6-12-1980)

Sec. 24-3. Use of county school property.

On county school property leased by the parks, recreation and cultural resources department, school functions have first priority. Parks and recreation department scheduled games and scheduled practices have priority over other league users and casual athletic games on park fields. All field schedules and reservations are handled through the supervisor of athletics.
(Code 1982, § 14-5; Ord. No. 80-14, § 10.1-4, 6-12-1980)

Sec. 24-4. Written permission.

All of the rules in this chapter requiring written permission require that such permits must be carried and produced upon demand.
(Code 1982, § 14-6; Ord. No. 80-14, § 10.1-17, 6-12-1980)

Sec. 24-5. Dates of operation.

All town parks shall be open for public use on a year-round basis unless specific dates of operation are posted.
(Code 1982, § 14-7; Ord. No. 80-14, § 10.1-2, 6-12-1980)

Sec. 24-6. Hours of operation.

No persons are permitted in any park during the hours of darkness except in parks lighted for extended use activities or unless written permission is obtained from the director of parks, recreations and cultural resources for after-dark programs. (Safety lights and/or night lights are not designed or intended for extended use activities). Parks lighted for extended use must be vacated by 11:00 p.m. unless special permission is granted by the director of parks, recreations and cultural resources. Parks and special facilities that require on-site supervision will have hours of operation posted and will be closed to the public other than during posted hours.
(Code 1982, § 14-8; Ord. No. 80-14, § 10.1-3, 6-12-1980)

Sec. 24-7. Damage to plants, turf, rocks, structures, streams.

No person shall cut, break, move, take or otherwise injure, destroy or deface any tree, shrub, plant, turf, rock or any building, fence, bridge, sign or other structure; or foul any stream, or dump any earth, rubbish or other substance or material in or upon any park without written permission of the director of parks, recreations and cultural resources. Such permission shall be given upon a showing that the activity is consistent with all other ordinances and will not result in permanent injury to the park.
(Code 1982, § 14-10; Ord. No. 80-14, § 10.1-9, 6-12-1980)

Sec. 24-8. Injuring or endangering wildlife.

No person shall, in any park, set a trap or snare, or annoy, disturb or poison any wild animal or bird or injure or destroy any nest or habitat.
(Code 1982, § 14-11; Ord. No. 80-14, § 10.1-11, 6-12-1980)

Sec. 24-9. Dangerous equipment.

Practicing, playing or using horseshoes, spears, javelins, archery and discus in park areas is prohibited except in areas expressly designated or provided for such purposes.
(Code 1982, § 14-12; Ord. No. 80-14, § 10.1-15, 6-12-1980)

Sec. 24-10. Reserved.

Sec. 24-11. Swimming.

Swimming is prohibited in all parks except in facilities expressly designed for that purpose. Personal bathing is prohibited.
(Code 1982, § 14-14; Ord. No. 80-14, § 10.1-5, 6-12-1980)

Sec. 24-12. Open fires.

No person shall make or kindle any open fire except in fireplaces and grills designed and provided for this purpose. Private portable grills may be used in certain park areas as approved by the director of parks, recreation and cultural resources.
(Code 1982, § 14-15; Ord. No. 80-14, § 10.1-10, 6-12-1980)

Sec. 24-13. Vehicles.

(a) No person shall ride or drive any motor vehicle, motorcycle, motor-driven cycle, or any other form of off-highway, motor-driven vehicle upon any park land except upon the roads or on areas which are designed and provided for such purposes. This shall not include the operation of motor vehicles engaged in property maintenance or in other services authorized by the town. All

ordinances regarding operation of a motor vehicle upon public streets or highways apply to operation upon streets within park land. Speed limits within all park lands shall be 15 miles per hour unless otherwise posted. There shall be no parking at any time except in designated areas.

(b) No bicycles, skateboards or rollerblades are to be ridden in areas that have been posted by signs that expressly prohibit such.
(Code 1982, § 14-17; Ord. No. 80-14, § 10.1-6, 6-12-1980; Ord. No. 87-105, § 1, 12-10-1987)

Sec. 24-14. Livestock and domestic animals.

Livestock and domestic animals of any kind are prohibited in any park.

Exception: A dog or a cat upon a leash not exceeding six feet in length is permitted. Horseback riding is prohibited except upon facilities expressly designed for that purpose. Lawful activities of any Law Enforcement Canine Team in the performance of their duties is permitted.
(Code 1982, § 14-18; Ord. No. 80-14, § 10.1-13, 6-12-1980; Ord. No. 90-30, § 1, 4-12-1990; Ord. No. 05-010, 7-28-2005)

Sec. 24-15. Entertainment; demonstrations; exhibitions.

No entertainment, demonstration or exhibition shall be given in any park except under the supervision and/or written permission of the director of parks, recreation and cultural resources.
(Code 1982, § 14-19; Ord. No. 80-14, § 10.1-16, 6-12-1980)

Sec. 24-16. Advertising matter; solicitations.

No person shall, without written permission of the director of parks and recreation, erect, paint, post or otherwise affix or distribute any signs, advertisements or circulars on park property. The sales of anything or the solicitation of funds or donations within any park are forbidden except upon written permission of the director of parks, recreations and cultural resources. Such permissions shall be given upon a showing that there will be compliance with all laws and ordinances and a further showing that the activity will not injure the parks or interfere with the right of others to use the park.
(Code 1982, § 14-20; Ord. No. 80-14, § 10.1-7, 6-12-1980)

Sec. 24-17. Skateboarding safety equipment requirements.

(a) *Purpose*. G.S. ch. 99E limits the liability of municipalities for damages that might arise out of a person's participation in skateboarding when the municipality adopts an ordinance requiring any person riding a skateboard in areas designated for that purpose, to wear certain protective gear. Although the town is not designating any area of Godbold Park, other than the existing skate park facility, as a skateboarding area, the town desires to adopt an ordinance requiring any person riding a skateboard on any approach to the skate park facility in Godbold Park to wear protective gear.

(b) *Protective gear requirements.* Every person operating a skateboard within Robert V. Godbold Park shall wear a protective helmet with the chin strap securely fastened under the chin, protective elbow pads and kneepads.

(c) *Enforcement.* Violations of this article shall be deemed infractions pursuant to G.S. 14-4, punishable by a fine of up to $50.00 and any other costs as prescribed by law.

(d) *Parent/guardian responsibility.* No parent or guardian of any juvenile operating a skateboard described in subsection (a) above shall knowingly allow a violation of this section. The parents or guardians of juveniles 15 years of age or under, shall be deemed responsible for ensuring such compliance.
(Code 1982, § 14-21; Ord. No. 03-010, 10-9-2003)

Sec. 24-18. Lazy Daze and other specially designated town sponsored events; activities prohibited.

(a) *Purpose.* Lazy Daze Arts & Crafts Festival, a town-sponsored festival, attracts an extraordinarily large number of persons who are confined to a limited area for a festival that is of greater duration than other community events. Because of crowded conditions, certain activities, such as the riding of bicycles and other wheeled vehicles, and the throwing of frisbees and balls, pose hazards presenting the possibility of injury to persons and damage to property. Additionally, Lazy Daze features organized activities, live entertainment, food concessions, and hundreds of authorized exhibitors who display and offer for sale artwork, crafts, and related items. The town parks and recreation department issues permits to persons desiring to place or maintain an exhibit or concession stand or to otherwise engage in outdoor sales. The exhibition, offering for sale and selling of merchandise or food and beverages by unauthorized vendors poses a threat to the public safety and welfare, interferes with planned traffic flow and the maintenance of order, frequently violates the town zoning code, and detracts from the authorized exhibits and concessions. The purpose of this section is to protect and promote the public health, safety, welfare, and recreation, by regulating certain activities at Lazy Daze and other town-sponsored events to which these provisions are made to apply.

(b) *Applicability.* This section shall apply to that town-sponsored festival known as Lazy Daze Arts & Crafts Festival and may be made to apply to any other town-sponsored festival or event by action of the town council.

(1) As to Lazy Daze, this section shall apply from 12:00 noon on the day preceding the event through 9:00 p.m. on the scheduled day of the event, or the rain date, if necessary, to all of that area bounded on the south by Dry Avenue; on the west by South and North Harrison Avenue; on the north by the CSX Railroad tracks; and on the east by Walker Street.

(2) The area and boundaries of any other town-sponsored event to which these provisions shall be made to apply shall be determined by the town council.

(3) The boundaries and interior of Lazy Daze and any other event to which these provisions apply shall consist of any property that is part of Lazy Daze or other special event and shall include any public street, sidewalk, or other publicly owned area that is within or constitutes the boundary of that event.

(c) *Unlawful to operate bicycle or other wheeled vehicle.* It shall be unlawful for any person to operate a bicycle, tricycle, unicycle, moped, skateboard, or any other wheeled vehicle, roller skates or roller blades (all hereafter referred to as "wheeled vehicle") on or within the boundaries of Lazy Daze or any other town-sponsored event to which these provisions have been made to apply. For purposes of this section, the term "operate" shall mean the use, putting into action, or causing to function of a wheeled vehicle by a person mounted thereon. This section shall not apply to wheelchairs, baby strollers, or baby carriages.

(d) *Unlawful to throw balls, etc.* It shall be unlawful for any person to toss or throw a ball, Frisbee, model airplane, or similar object on or within the boundaries of Lazy Daze or any other town-sponsored event to which these provisions have been made to apply.

(e) *Unlawful to use fireworks at Lazy Daze.* It shall be unlawful for any person to purchase, sell, deal in, transport, possess, receive, use, or cause to be used or discharged, any fireworks on or within the boundaries of Lazy Daze or any other town-sponsored event to which these provisions have been made to apply. For the purpose of this section, "fireworks" shall mean those nonexploding glow worms, smoke bombs, noisemakers, and sparklers that are described in G.S. 14-414(1)—(6).

(f) *Unlawful to conduct outside sales.* It shall be unlawful for any person to exhibit, display, offer for sale or to sell any merchandise or other item, any service, food or beverage from any outside location (hereafter referred to as "outside sales") on public property, within the boundaries of Lazy Daze unless such person has been issued a permit for such outside sales by the town parks and recreation department. Any person conducting outside sales shall display the permit issued by the parks and recreation department in a conspicuous place at the location of the outside sales.

(g) *Exhibit permits.* It shall be unlawful to fail to produce and exhibit any permit from the town parks and recreation department for outside sales an exhibitor or vendor claims to have upon the request of a law enforcement officer (or a member of the parks, recreation and cultural resources department) who shall desire to inspect it for purposes of ensuring compliance with this section.

(h) *Failure to cease activities.* It shall be unlawful for a person on or within the boundaries of Lazy Daze or any other special event to which these provisions have been made to apply, to fail to obey the command of a law enforcement officer to:

(1) Cease the operation of a wheeled vehicle;

(2) Cease the tossing, or throwing of a ball, frisbee, model plane, or other object; or

(3) Cease exhibiting, displaying, offering for sale, or selling any merchandise, service, food or beverage, on or within 100 feet of the boundaries of Lazy Daze without a valid permit from the parks and recreation department and a valid town business license.

(i) *Exception.* This section shall not apply to the operation of any wheeled vehicle or the throwing or tossing of any ball, frisbee, or other object if the otherwise prohibited activity is part of an authorized exhibit or display. The director of parks, recreation and cultural resources or designee shall have the authority to specify the conditions under which wheeled vehicles may be operated and balls, Frisbees, or objects may be thrown or tossed for the protection of the public.

(j) *Animals at Lazy Daze.* Pursuant to section 6-72, animals are prohibited at Lazy Daze and certain other special events. The town council, by its action, may also make the provisions of section 24-5 apply to other town-sponsored events.

(k) *Enforcement.* Any law enforcement officer may issue a citation for a civil penalty for violation of this section in the amount of $20.00. This authority shall be in addition to any other authority and shall not preclude in any way any law enforcement officer from exercising any authority or carrying out the duties of a law enforcement officer. Enforcement of an unpaid citation may be by issuance of a criminal summons or by the filing of a civil complaint to collect the unpaid debt owed to the town.

(Code 1982, § 14-28; Ord. No. 91-29, § 1, 8-8-1991; Ord. No. 94-018, § 1, 7-28-1994)

State law reference—Civil penalties, G.S. 160A-175(c).

Chapter 25

RESERVED

Chapter 26

SOLID WASTE MANAGEMENT*

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Secs. 26-117—26-145. Reserved.

***State law references—**Solid waste management, G.S. 130A-290 et seq.; local government solid waste responsibilities, G.S. 130A-309.09A; placing refuse within town, G.S. 160A-303.1.

Article V. Solid Waste Citizens' Convenience Center

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Sec. 26-148. Scavenging prohibited.
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ARTICLE I. IN GENERAL

Sec. 26-1. Administration and enforcement generally.

(a) The collection and removal of solid waste from premises in the town shall be under the jurisdiction of the director of public works. Enforcement of the provisions of this chapter shall be under the supervision of the director of public works.

(b) When the public works director determines that a violation of the requirements of this chapter exists, the director shall provide written notice, hereafter referred to as a correction order, to the owner of the property involved, naming the address of the property in violation, the specific violation and a time period in which the owner or occupant shall correct the violation. The director may also provide additional notices of violation by other means as deemed appropriate.

(c) Should any owner, lessee or occupant fail or refuse to heed or comply with a notice, the director may take or order direct actions to correct the violation without additional notice and may bill the full town costs, including an administrative fee, thereof to the property owner. Failure to pay the bill may result in collection action by the town, which may include the placement of a lien on the property until such time as the bill is paid and if not paid within 30 days, shall be collected in the same manner provided for the collection of delinquent taxes. Nothing contained herein shall limit the authority of the town to summarily abate public health nuisances.
(Code 1982, § 16.5-1; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 05-003, 2-24-2004; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-2. Right of entry.

The director of public works or any of his assistants shall have the right to enter at any reasonable time any premises for the purpose of making the inspections or investigations as required by this chapter.
(Code 1982, § 16.5-3; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes shall mean refuse resulting from the burning of wood, coal, coke and other combustible material.

Building solid waste shall mean solid waste from construction, remodeling and repair operations on houses, commercial buildings and other structures, regardless of who is doing the construction, including, but not limited to, excavated earth, stones, brick, plaster, lumber, concrete and waste parts occasioned by installations and replacements.

Combustible solid waste shall mean solid waste capable of being incinerated or burned, such as garbage, paper, rags, boxes and wood.

Director shall mean the director of public works of the town of Cary, or his agent.

Garbage shall mean animal and vegetable solid waste resulting from the handling, preparation, cooking and consumption of food, including a minimum amount of liquid necessarily incident thereto.

Industrial solid waste shall mean solid waste from factories, processing plants and other manufacturing enterprises, exclusive of building solid waste and refuse.

Land clearing debris shall mean solid waste which is generated solely from land clearing activities, including, but not limited to, stumps, trees, brush and other vegetative waste incidental to tree, brush and stump removal.

Noncombustible solid waste shall mean solid waste not capable of incineration or burning, such as ashes, cans, metals, mineral matter, glass and crockery.

Ordinances shall mean the Code of Ordinances of the Town of Cary, North Carolina.

Paper yard waste bag shall mean a sanitary kraft paper sack, or equal, of 30-gallon capacity, two-ply, 30-pound wet strength with decomposing glue and reinforced self-supporting square bottom closure.

Refuse shall mean solid waste, including, but not limited to, garbage, rubbish and ashes.

Regulations shall mean regulations of the director of public works of the town of Cary, now or hereafter in effect, promulgated under this article or other authority.

Rubbish shall mean solid waste (exclusive of garbage and ashes) including, but not limited to, papers, rags, cartons, boxes, wood, excelsior, rubber, leather, cans, metals, mineral matter, glass and crockery.

Yard and leaf waste shall mean vegetative matter resulting from landscaping maintenance with no earth or soil attached, including, but not limited to, leaves, grass, twigs, certain limbs, hedge trimmings, plant trimmings, hay, straw, pine straw, pine cones, and shrubs.
(Code 1982, § 16.5-4; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-4. Littering and illegal dumping.

(a) *Illegal dumping.* No person shall throw, drop or deposit, or cause to be thrown, dropped or deposited, on any street, avenue, alley, highway, greenway, footway, sidewalk, park or other public place or on any land in the town not owned by the person in question (vacant or occupied), any waste, including, but not limited to, refuse, yard or leaf waste, land clearing debris, building debris including material used in building, construction, repair, remodeling, demolition and excavating operations, dead animals, putrescible matter, paper, drinking cups, broken glass, and anything injurious to health.

(b) *Cleanup and removal.* If any person, while transporting or hauling, or causing to be transported or hauled such rubbish or solid waste material, or earth excavation, coal or other material, shall throw, drop or deposit or cause to be thrown, dropped or deposited, such rubbish or material from the body of the vehicle, in violation of the provisions of this subsection, such person must clean up and remove such rubbish or material in a manner and within a time satisfactory to the public works

code enforcement officer. Should any owner or person refuse or fail to comply with such notice, the department of public works may clean up and remove such rubbish and material and the town shall collect the cost of such cleaning up and removal from such person.
(Code 1982, § 16.5-5; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-5. Throwing or burning refuse.

No person shall burn or cause to be burned any refuse, including yard and leaf waste, on any street or sidewalk, in any catch basin or manhole of the town.
(Code 1982, § 16.5-6; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-6. Removal of dead animals.

Dead animals on the street or placed in solid waste containers will be removed and buried as soon as practicable by the town after receipt of notice thereof.
(Code 1982, § 16.5-7; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-7. Importation of solid waste.

No person shall bring or cause to be brought into the municipal limits of the town any leaf or yard waste, building debris, industrial waste, land clearing debris, rubbish, refuse, garbage or any other type of solid waste for the purpose of collection and disposal by the town, provided that the prohibition contained in this subsection shall not apply to the deposit of waste not injurious to the health of the public, where permission to make such deposit is granted in advance by the town manager or his designated assistant, nor to the filling in or grading of property with earth, mud, rubble masonry or concrete or similar materials which has been permitted by the town.
(Code 1982, § 16.5-8; Ord. No. 92-37, § 1, 6-11-1992)

Secs. 26-8—26-39. Reserved.

ARTICLE II. SOLID WASTE COLLECTION

Sec. 26-40. Availability and extent of service.

The town shall collect, remove and dispose of all solid wastes, including, but not limited to, garbage and rubbish, within the town limits, except in case of emergency arising from an act of God or under circumstances over which the town has or had no control, as set forth in this article. Service shall consist of the collection of solid waste each week as set forth in the town solid waste collection policy, except during weeks when holidays are authorized and during which special schedules will be established.
(Code 1982, § 16.5-16; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-41. Limitations on service.

(a) Offices, businesses, industries and other premises that cannot be serviced by two 95-gallon carts per each solid waste collection day must arrange with private commercial collectors for service, and will not pay sanitation charges to the town.

(b) Existing multi-family complexes with three or more units receiving service prior to July 1, 2005.

(1) The department of public works shall be responsible for the collection and removal of not more than four solid waste containers of 32-gallons capacity and each weighing not more than 25 pounds on its prescribed collection days at the cost prescribed annually in the town's budget for the fiscal year.

(2) All solid waste containers shall be placed in easily accessible, ground level areas. The department of public works shall not be responsible for the collection and removal of solid waste containers below ground level or on second floors of buildings. The department of public works shall not be required to enter any building, store, shed, fenced area or any other closed structure for the collection of solid waste.

(c) Roll-out cart curbside service.

(1) The department of public works shall be responsible for the collection and removal of solid waste containers of not over 95-gallon capacity on its prescribed collection days at the cost prescribed annually in the town's budget for the fiscal year.

(2) All solid waste roll-out carts shall be placed at the curb, not in the street, on the sidewalk, or on your meter box. Roll-out carts shall be placed "facing out" and away from light poles, mail boxes, or fire hydrants.

(Code 1982, § 16.5-17; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 05-014, 9-22-2005; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-42. Collection fees.

(a) The charges for solid waste collection and disposal per month per unit, as defined in this article, shall be prescribed annually in the town's budget for the fiscal year.

(b) The charges prescribed by the town council shall apply to each residence or business in the town that can be served within the limitations noted. Several offices and businesses, which are served by the same water meter and have one sanitation collection location with not more than two roll out carts, shall pay one sanitation fee for this service.

(c) The monthly charge shall be billed by the town to each unit each month and shall be payable with the town water and sewer billing within the time limit fixed for the payment of the utility bill.

(d) If such charge shall not be paid as provided herein before, then the town may discontinue further collection and removal of such solid garbage, refuse, trash, and recyclable materials from the unit involved and the further retention of such garbage, refuse, trash, and recyclable materials on the

property involved shall be unlawful and shall subject the resident of the unit and the owner of the properties to all applicable health and sanitation regulations and laws.

(e) No person other than the town shall perform, for pay, the service of collecting, hauling and disposing of solid waste from within the town limits, except as provided elsewhere in this chapter or unless such authorization is given in writing by the town manager with the approval of the town council.
(Code 1982, § 16.5-18; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 05-014, 9-22-2005)

Sec. 26-43. Precollection practices.

(a) *Preparation of refuse.*

(1) Garbage shall be placed in a plastic bag and deposited promptly in solid waste cans or carts. If the garbage is wet, it shall have the liquid drained off and it shall be wrapped in paper or other combustible material, thus preventing smell and the breeding of flies in summer months and the freezing and adhering to the sides of the can in winter months.

(2) All ashes must be fully extinguished prior to placement in solid waste cans or containers for collection by the town.

(b) *Solid waste containers.*

(1) Existing multi-family complexes with three or more units receiving service prior to July 1, 2005

a. Every person producing or having solid waste shall provide and keep on the premises or property occupied or used by him sufficient solid waste containers to handle all accumulations of solid waste on such premises or property in the intervals between collections by the department of public works; provided, that nothing in this subsection shall be interpreted to increase the limitations on service otherwise prescribed in this article.

b. Each container shall be of such size and shape as to be handled by one person and shall have a minimum of two handles. Each container shall have a tight-fitting, watertight cover, shall be of metal or plastic construction, shall have a capacity of not less than ten gallons, or more than 32 gallons, shall be kept covered at all times, and shall be maintained in good, serviceable condition, free from defects such as ragged or sharp edges that will hamper or injure the persons collecting the contents thereof. Otherwise, it must be promptly replaced by a proper container.

(2) Roll-out cart curbside service.

a. The town shall furnish each solid waste collection customer with a roll-out cart. This container shall be used by each residential solid waste collection customer to store solid waste materials. It shall be the responsibility of each customer to maintain that container in a functional state of repair and to report any damage to or loss of that container immediately to the department of public works. Each container is and shall remain the property of the town and shall remain at a customers' residence after that customer has moved or otherwise vacated the dwelling.

(c) *[Public nuisance.]* All persons shall cover and secure all solid wastes, keeping them in a clean and orderly manner and preventing them from being scattered by animals, wind or other means, and becoming a public nuisance. The person generating solid wastes that becomes a public nuisance shall be responsible for the immediate cleanup of such material.

(d) *Storing of solid waste.*

(1) All combustible and noncombustible solid waste shall be stored in containers complying with this article.

(2) Every owner and every occupant or other persons in control of any building or land in the town, including vacant property, shall be kept the same in a clean and orderly condition, shall not allow solid waste to accumulate in any building or on any land (vacant or occupied), and shall deposit solid waste for collection by the department of public works in accordance with the provisions of this article and the town solid waste collection policy.

(Code 1982, § 16.5-19; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 05-014, 9-22-2005; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-44. Roll-out cart service.

(a) All garbage shall be stored, pending collection by the town, in the roll-out carts provided by the town, and the top of such containers shall be kept securely fastened at all times. Such roll-out carts shall be kept between scheduled pickups either within a completely enclosed substantial structure such as a house, garage, or shed, or:

(1) If a lot has frontage on only one street, then such roll-out carts shall be located behind the building line of the side of the principal building on that lot that faces the street;

(2) If a roll-out cart is stored in front of the building line, it must be screened so that it cannot be seen from the street.

(b) Roll-out carts shall be placed adjacent to the street (on the street side of any drainage ditch or swale) for collection by 7:00 a.m. on the scheduled collection day or no earlier than dusk prior to the collection day. After collection, all roll-out carts shall be removed to a storage location that complies with subsection (a) of this section by 6:00 a.m. on the day following the collection day.

(c) Should roll-out carts remain at the curb and not comply with subsection (a) of this section, a roll-in fee, established by the annual budget ordinance, will be assessed on the second occurrence within a twelve-month period.

(d) If the director determines that, because of the physical infirmity of the occupant of any premises, the occupant cannot without severe hardship transport the roll-out cart from the storage location required by subsection (a) of this section to the collection point required by subsection (b) of this section, he may authorize a special exemption service.

(e) The cost of the roll-out cart is included in the regular sanitation fee. A monthly charge, in addition to the regular sanitation fee, for the use of a second cart shall be established by the annual budget ordinance.

(f) Damage to the town's roll-out cart outside of normal wear and tear can be assessed to the residence up to the full replacement cost of a new container.
(Code 1982, § 16.5-21; Ord. No. 97-038, 10-9-1997; Ord. No. 05-014, 9-22-2005)

Secs. 26-45—26-75. Reserved.

ARTICLE III. YARD AND LEAF WASTE COLLECTION

Sec. 26-76. Separation of compost from yard and leaf waste.

The town hereby establishes the mandatory separation of compostable yard and leaf waste material from garbage, rubbish and other trash, by the residents of the town, and for the collection of these yard and leaf waste materials at the residents' curbside by the town employees or their agents.
(Code 1982, § 16.5-30; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-77. Availability and extent of service.

(a) The town shall collect, remove and dispose of all leaf and yard waste from its residential solid waste collection customers within the town limits, except in case of emergency arising from an act of God or under circumstances over which the town has or had no control, as set forth in this article or in the town solid waste collection policy. Service shall consist of curbside collection of leaf and yard waste once each week, as set forth in the town solid waste collection policy, except during weeks when holidays are authorized and during which special schedules will be established.

(b) Anyone utilizing trash receptacles, of any size, to contain yard waste for the collection by town crews, must follow the same rules in section 26-44(b), specifically, trash receptacles shall be placed adjacent to the street (on the street side of any drainage ditch or swale) for collection by 7:00 a.m. on the scheduled collection day or no earlier than dusk prior to the collection day. After collection, all trash receptacles shall be removed to a storage location that complies with subsection (a) of section 26-44 by 6:00 a.m. on the day following the collection day.

(c) Should yard waste receptacles remain at the curb and not comply with subsection (a) of this section, a roll-in fee, established by the annual budget ordinance, will be assessed on the second occurrence within a 12-month period.
(Code 1982, § 16.5-31; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 06-013, 7-27-2006)

Sec. 26-78. Limitations on service.

(a) Curbside yard and leaf waste collection service shall be provided only to residential solid waste customers of the town. This service will not be provided to institutional, business, commercial or industrial solid waste collection customers. Furthermore, this service does not include the collection of land clearing debris.

(b) All yard and leaf waste materials not prepared and handled in accordance with the provisions of the town solid waste collection policy shall not be collected by the town or their agents.
(Code 1982, § 16.5-32; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-79. Ownership of yard and leaf waste material.

Upon placement of yard and leaf waste material at curbside for collection by the town or its agents in accordance with this article and the town's solid waste collection policy, such yard and leaf waste materials shall become the property of the town. It shall be a violation of this article for any person, other than authorized agents of the town acting in the course of their employment, to collect or pick up any yard and leaf waste material so placed.
(Code 1982, § 16.5-33; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-80. Disposal of yard and leaf waste material.

All yard and leaf waste material shall be disposed of in accordance with all applicable local ordinances and state and federal rules and regulations.
(Code 1982, § 16.5-34; Ord. No. 92-37, § 1, 6-11-1992)

Secs. 26-81—26-110. Reserved.

ARTICLE IV. SOLID WASTE RECYCLING

Sec. 26-111. Separation and collection of recyclable materials.

The town hereby establishes the voluntary separation of selected recyclable solid waste materials from garbage, rubbish and other trash, by the residential solid waste collection customers of the town, and the collection of those selected recyclable solid waste materials at the customer's curbside by the town or its agents.
(Code 1982, § 16.5-40; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-112. Availability and extent of service.

The town shall collect, remove and dispose of the designated recyclable solid waste materials within the town limits, except in case of emergency arising from an act of God or under circumstances over which the town has or had no control, as set forth in this article or in the town solid waste collection policy. Service shall consist of curbside collection of recyclable solid waste materials once each week, as set forth in the town solid waste collection policy, except during weeks when holidays are authorized and during which special schedules will be established.
(Code 1982, § 16.5-41; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-113. Limitations on service.

(a) Curbside recyclable solid waste material collection service shall be provided only to residential solid waste customers of the town. This service will not be provided to institutional, business or commercial or industrial solid waste collection customers. Furthermore, this service includes only those recyclable solid waste materials set forth in the town solid waste collection policy.

(b) All recyclable solid waste materials not prepared and handled in accordance with the provisions of this article and the town solid waste collection policy shall not be collected by the town or its agents.
(Code 1982, § 16.5-42; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-114. Ownership of recyclable solid waste materials.

Upon placement of recyclable solid waste materials at curbside for collection by the town or its agents in accordance with this article and the town solid waste collection policy, such recyclable solid waste materials shall become the property of the town, except those recyclable materials not prepared and handled in accordance with the town solid waste collection policy and any materials not included in the list of recyclable solid waste materials in the town solid waste collection policy but placed at curbside for collection. It shall be a violation of this article for any person, other than authorized agents of the town acting in the course of their employment, to collect or pick up any recyclable solid waste materials so placed.
(Code 1982, § 16.5-43; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-115. Recycling containers.

The town shall furnish each solid waste collection customer with a special container which is specifically designed for the collection of recyclable solid waste materials. This container shall be used by each residential solid waste collection customer to store recyclable solid waste materials. It shall be the responsibility of each customer to maintain that container in a functional state of repair and to report any damage to or loss of that container immediately to the department of public works. Each container is and shall remain the property of the town and shall remain at a customers' residence after that customer has moved or otherwise vacated the dwelling.
(Code 1982, § 16.5-44; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 26-116. Collection practices.

(a) *Precollection practice.* After the recyclable solid waste materials have been properly prepared, those recyclable materials can be stored in the recycling container until the designated collection day, at which time the container and its contents shall be placed at curbside in front of the customer's residence not later than 7:00 a.m., nor earlier than dusk of the day prior to collection.

(b) *Post-collection practice.* After the recyclable materials have been collected by the town or its agents, each solid waste collection customer who has placed his recyclable materials collection container at curbside shall retrieve his container from curbside and return the container to its storage location in or at his residence, not later than 6:00 a.m. on the day following the collection day.
(Code 1982, § 16.5-45; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 05-014, 9-22-2005)

Secs. 26-117—26-145. Reserved.

ARTICLE V. SOLID WASTE CITIZENS' CONVENIENCE CENTER

Sec. 26-146. Availability and extent of service.

(a) The solid waste disposal convenience center is available to all town residents who pay a monthly sanitation fee and wish to dispose of solid waste, except as provided hereinafter.
(Code 1982, § 16.5-51; Ord. No. 92-37, § 1, 6-11-1992; Ord. No. 2019-Code-01, § 1, 3-28-2019)

Sec. 26-147. Limitations on service.

(a) Each person using the convenience center shall be responsible for placing his solid waste in the containers provided for that purpose.

(b) The convenience center shall not be used by builders, contractors, or developers or individuals acting as their own builder or contractor by performing home or building construction, remodeling, repair, reconstruction or demolition. Those persons must dispose of their building debris and solid waste in accordance with all applicable federal, state and local laws, regulations, rules and ordinances.

(c) The convenience center shall not be used for industrial, commercial or business waste.
(Code 1982, § 16.5-51; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-148. Scavenging prohibited.

No person shall enter the solid waste container or containers for the purpose of scavenging, rummaging, ransacking or searching for articles of refuse or other solid waste material placed in said container or containers. No person shall be allowed to take away any articles from said container or containers.
(Code 1982, § 16.5-52; Ord. No. 92-37, § 1, 6-11-1992)

Sec. 26-149. Use by the town.

The town shall use the convenience center facility as it deems necessary and expedient to provide cost effective municipal services to the public.
(Code 1982, § 16.5-53; Ord. No. 92-37, § 1, 6-11-1992)

Chapter 27

RESERVED

Chapter 28

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

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Sec. 28-2. Street crossing—Construction; materials.
Sec. 28-3. Same—Warning devices.
Sec. 28-4. Trees and shrubbery.
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Sec. 28-6. Placing objects on streets, sidewalks, greenways, etc.
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Sec. 28-98. Sight distance.
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***State law references—**Establishment and control of streets, G.S. 160A-296; roads and highways, G.S. Ch. 136; authority of town to keep public ways free from unnecessary obstructions, G.S. 160A-296(a)(2); placing dangerous objects on highway, G.S. 136-91; obstructing highways as misdemeanor, G.S. 136-90; openings, structures, pipes, trees and issuance of permits, G.S. 136-93.

Article V. Excavations

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Sec. 28-157. Application for permission to encroach.
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Sec. 28-207. Enforcement.
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Sec. 28-213. Permit application.
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Sec. 28-216. Appeals.
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ARTICLE I. IN GENERAL

Sec. 28-1. Injuring and defacing sidewalks, etc.

No person shall loosen or remove any plank, board, block, brick, stone, stringer or support from any sidewalk, crossing, bicycle path, or greenway.
(Code 1976, § 10-16; Code 1982, § 17-3; Ord. No. 85-3, § 1, 1-10-1985; Ord. No. 87-106, § 1, 12-10-1987)

Sec. 28-2. Street crossing—Construction; materials.

All railroad street crossings in the town shall be constructed so as to maintain a uniform grade over the entire width of the street intersection. Methods and materials approved by the railroad and the director of transportation and facilities shall be used for the construction of the crossing. When the roadbed of the railroad shall be lower than the street, the incline shall be uniform and gradual. Where crossings cannot be constructed so as to meet the above requirements, elevated crossings shall be constructed according to such plans as shall be submitted to and approved by the director of transportation and facilities .
(Code 1976, § 13-4; Code 1982, § 16-1; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 28-3. Same—Warning devices.

At all railroad street grade crossings where the town has not made any greater requirements as to warning devices, a warning device facing oncoming traffic in each direction shall be erected and maintained by the railroad company which operates trains, engines or cars across such crossings. Said warning devices shall comply with current state standards.
(Code 1976, § 13-1; Code 1982, § 16-2)

Sec. 28-4. Trees and shrubbery.

(a) No person owning property adjacent to any sidewalk, greenway, or bicycle path shall allow any hedge or shrubbery of any kind whatsoever or overhanging limbs from any tree upon the property of such owner to obstruct the free use of the sidewalk or street; provided, that said property owner shall be notified by the town manager to remove same.

(b) If the property owner shall fail to remove or cause to be removed such obstruction within ten days after notice, the town manager may order such removal and charge the costs thereof to the property owner.
(Code 1976, § 14-27; Code 1982, § 17-57; Ord. No. 87-106, § 2, 12-10-1987)

Sec. 28-5. Construction near sidewalk.

Before building or remodeling at any place in close proximity to a public sidewalk, an overhead covered passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage.
(Code 1976, § 14-28; Code 1982, § 17-58)

Sec. 28-6. Placing objects on streets, sidewalks, greenways, etc.

No person shall maintain, place, or cause to be placed any substance, structure, object, improvement, or material of any type or description which will obstruct the free passage of persons or vehicles in any public street, alley, sidewalk, greenway, bicycle path or lane, nor shall any person place, or cause to be placed, on or in any public street, alley, sidewalk, greenway, or bicycle path or lane, or in any portion of the right of way, any structure, object, improvement, or material of any type or description, or any other obstruction of any kind ("obstruction"). This section does not apply to gates or other obstructions designed to regulate vehicular or pedestrian access and placed by the Town, or to objects or improvements placed pursuant to a valid agreement with the Town. Any obstruction placed in violation of this section is subject to summary removal by the Town. The cost of removal of the obstruction may be charged to the owner.
(Code 1976, §§ 10-19, 14-29; Code 1982, § 17-59; Ord. No. 87-106, § 3, 12-10-1987; Ord. No. 02-017, 6-27-2002; Ord. No. 2018-Code-05, 12-13-2018)

Sec. 28-7. Assembly on streets, sidewalks, greenways, etc.

All persons are forbidden from assembling, collecting together and standing so as to obstruct any street, sidewalk, greenway or bicycle path, and all persons so assembling, collecting together or standing shall disperse and move upon the demand of any police officer.
(Code 1976, § 14-30; Code 1982, § 17-60; Ord. No. 87-106, § 4, 12-10-1987)

Sec. 28-8. Snow and ice removal.

Every occupant of a store building, in front of which the sidewalk is paved with stone, brick, asphalt or cement, shall remove snow, ice or other obstruction from such sidewalk at the earliest reasonable time and as soon as the weather permits.
(Code 1976, § 14-33; Code 1982, § 17-61)

Sec. 28-9. Special street cleaning or repair—When required.

(a) The words "special cleaning or repair," as used in this section and sections 28-10, 28-11, shall include cleaning, resurfacing, restoration of gravel and similar repairs made necessary by prohibited acts, neglects or conditions.

(b) Any act, neglect or omission or any condition caused or allowed to continue which creates, results in or causes a condition in or upon any public street, sidewalk or storm drain which requires special cleaning or repair of such street, sidewalk or storm drain is hereby prohibited.

(c) Prohibited acts, neglects, omissions and conditions which result in requiring special cleaning or repair of such street shall include but shall not be limited to:

(1) The hauling of dirt, debris and materials removed from the sites of construction or reconstruction of buildings or structures, or waste materials of any kind, in such manner that any portion of such dirt, debris or materials is spilled, lost, dropped or left upon the streets, sidewalks, greenways or bicycle paths.

(2) Depositing or leaving upon the streets, sidewalks, greenways, bicycle paths or other ways of mud, dirt or other material as a result of the use of trucks, construction equipment or

machinery, regardless of whether such materials are spilled, lost or dropped in transit or, are deposited upon the surface of the street or public property by the tires and wheels of such trucks, construction equipment or machinery.

(3) The grading of lots, or other land at elevations higher than street, sidewalk, greenway, bicycle path or other way, or any other acts, neglects or conditions created or allowed to exist upon such property which result in mud, dirt, soil, gravel, debris or other materials being washed onto streets or sidewalks or into the storm drainage system.

(d) Special cleaning or repairing of streets, sidewalks, bicycle paths, greenways and the storm drainage system shall be deemed to be required when their condition is such that the public health, safety, welfare or public use of the same is threatened, limited or impaired; the use and enjoyment of property abutting such streets or sidewalks is diminished or limited; or substantial damage is caused to the streets, sidewalks or drainage facilities or to such abutting property.
(Code 1976, § 14-36; Code 1982, § 17-62; Ord. No. 87-106, §§ 5, 6, 12-10-1987)

Sec. 28-10. Same—Action by town.

(a) Any person whose act, neglect, or omission causes or permits a condition to exist or continue upon any street, sidewalk, greenway, or bicycle path, or other way, or in any storm drain, which condition requires special cleaning or repair shall, upon receipt of written notice from the town, perform such special cleaning and repair upon and to such street, sidewalk or storm drain.

(b) Upon failure of the person responsible to perform special cleaning and repair after notice, the director of public works may cause the same to be performed by his department, and in such event shall keep records of the costs of such work, which may be computed on the basis of reasonably established per-mile, or per-hour, or both costs of the use of equipment, plus labor and materials, including water, likewise computed at cost to the town.

(c) Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a manner as to violate subsection (a) above and to create a hazardous condition, the appropriate town official may order the specific part of such work which is creating the violation to be immediately stopped. The order to stop shall be in writing to the person whose act, neglect or omission causes or permits a condition to exist or continue, and should state the specific work to be stopped, the specific reasons thereof, and the conditions under which the work may be resumed. Violation of a stop order shall constitute a misdemeanor.
(Code 1976, § 14-35; Code 1982, § 17-63; Ord. No. 80-5, § 1, 2-28-1980; Ord. No. 87-106, § 7, 12-10-1987)

Sec. 28-11. Same—Penalty; payment of costs.

(a) Any person whose act, neglect, omission or who, by permitting a condition to continue (whether done or neglected directly or through an agent, servant or employee) causes additional expense to the town for necessary special cleaning or repair shall reimburse the town for its expenses upon receipt of an itemized statement of expenses submitted by the town, and upon failure to reimburse the town shall incur and be liable to the town for a civil penalty of $200.00, in addition to such expenses.

(b) The department of public works shall send to any person responsible for additional expense to the town an itemized statement of the expense incurred and a request for reimbursement. The town attorney is authorized to bring suit in the name of the town to recover any such unpaid expenses and civil penalties.
(Code 1976, § 14-36; Code 1982, § 17-64; Ord. No. 2019-Code-04, 10-10-2019)

State law reference—Civil penalties, G.S. 160A-175(c).

Sec. 28-12. Signs in the right of way prohibited.

No sign may be placed within the right of way of any street located within the corporate limits of the Town of Cary and maintained by the Town of Cary unless expressly permitted by the Town of Cary Land Development Ordinance.

Enforcement of this prohibition by the Town may be made through either the Land Development Ordinance or this section. If enforced pursuant to this section 28-12, the following shall apply: Any sign placed in violation of this section shall be deemed a public nuisance and may be seized by an enforcement official or other representative of the Town. Any person owning or placing a sign in violation of this section shall be subject to a fine of $100 per day that the sign remains in place and may be charged the cost of removing and disposing of the sign. Violations of this provision shall not constitute a misdemeanor as provided in G.S. 14-4.

In addition, and as required by G.S. 136-32(f), any political sign that remains in a right-of-way of streets located within the corporate limits and maintained by the Town is to be deemed unlawfully placed and abandoned property, and a person may remove and dispose of such political sign without penalty.
(Ord. No. 2011Code-06, 9-27-2011; Ord. No. 2020-LDO-01, 5-7-2020)

Secs. 28-13—28-40. Reserved.

ARTICLE II. SIDEWALK CONSTRUCTION AND MAINTENANCE*

Sec. 28-41. Created.

(a) In addition to all other funds established and maintained by the town, there is hereby created and established a curb, gutter, street and sidewalk assessment revolving fund.

(b) Money appropriated and paid into said fund shall be expended only for the purpose of financing, in whole or in part, curb, gutter, street and sidewalk projects, the cost of which is assessed, in whole or in part, against owners of abutting property, and which are duly authorized by the town council pursuant to G.S. Ch. 160A, art. 10 (G.S. 160A-216 et seq.).
(Code 1976, § 14-10; Code 1982, § 17-15)

State law reference—Payment of assessments in cash or by installments, G.S. 160A-232.

Sec. 28-42. Purpose.

It is the purpose and intent of this fund to provide an orderly method of financing for continuing curb, gutter, street and sidewalk installations without borrowing money.
(Code 1976, § 14-11; Code 1982, § 17-16)

Sec. 28-43. Construction by town; lien on property; indemnity bond.

(a) The town council may, without petition of abutting property owners, require the construction, reconstruction, alteration or repair of sidewalks in conformity with the provisions of the town charter.

***State law references—**Special assessments, G.S. 160A-216 et seq.; interest on assessments, G.S. 160A-233.

(b) If any of such improvements are required of a property owner and the property owner shall fail or refuse to make the same within 30 days after notice thereof, the town council may cause such improvements to be made and assess the cost thereof against the property abutting the improvement. In making and collecting assessments for such improvements, the procedure outlined in G.S. Ch. 160A, art. 10 (G.S. 160A-216 et seq.) shall be followed to the extent that the same is not in conflict with the town Charter. In the event of conflict in the provisions of the General Statutes and the Charter, the provisions of the Charter shall control.

(c) As a condition of the issuance of a permit for such improvements (in addition to the other requirements of this chapter, when such work is to be done either by a person employed by the owner of the property abutting the improvement, or by the town under contract, upon failure of such owner to do the required work, after notice), the person making the improvement shall be required to enter into a continuing indemnity bond, with sufficient surety, upon condition that such work will be done in conformity with the standards established by the town and that the town will be indemnified for any damages it might sustain as a result of the breach of such condition. The damages payable to the town shall be the amount required to make such sidewalk conform to such town standards. The penalty of the bond shall be $1,000.00, but the amount of damages recoverable by the town from the person failing to perform the work in conformity with the town standards shall not be limited to the penalty of the bond.
(Code 1976, § 14-12; Code 1982, § 17-17; Ord. No. 06-008, 4-27-2006)

Sec. 28-44. Sidewalk construction costs.

(a) If grading is required in the construction, reconstruction or alteration of a sidewalk, the town will bear the cost of grading on the street right-of-way and shall likewise bear the cost of replacing existing sidewalks which are in good condition and meet the sidewalk standards of the town. The property owner in such cases will bear the cost of sidewalk construction, except as set out above, and shall pay for such relocation and construction of driveways, steps and other means of access to his property from the street as he may deem necessary.

(b) In making and collecting assessments for such improvements, the procedure set forth in section 28-43(b) shall be followed.
(Code 1976, § 14-13; Code 1982, § 17-18)

Sec. 28-45. Interpretation.

Nothing in this article shall be interpreted so as to relieve any owner of land, developer or subdivider from installing at his total expense sidewalks as and when required by other ordinances.
(Code 1976, § 14-26; Code 1982, § 17-30)

Sec. 28-46. Financial policy; criteria.

(a) The town will require the developer of a site or subdivision within the town's jurisdiction to fund the installation of sidewalk in accordance with the requirements of the town standard specifications and details manual as a part of the proposed development. The town shall fund the construction of sidewalk improvements approved for inclusion as a part of a proposed thoroughfare project. The town shall assess at an established unit price per foot, equating to the property owners paying 50 percent of the cost of installing paved sidewalk along any streets in which the abutting property owners request the installation of sidewalk. All financing by the town by assessing the cost of constructing the sidewalk against abutting properties shall be accomplished in accordance with the provisions of the Charter of the town and the General Statutes of North Carolina, and in accordance with the following:

(1) A petition must be filed with the director of transportation and facilities. The petition must be signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the linear footage of frontage of the property abutting on the street or portion thereof to be improved. The petition must outline the reasons for the installation of the requested sidewalk. The petition must specify that 50 percent of the cost of the improvement shall be assessed against the properties abutting upon both sides of the street or portion thereof to be improved.

(2) In the event the town council is satisfied that all of the conditions set forth in subsection (1) above have been met, the town council may approve the construction of the requested sidewalk. The director of transportation and facilities shall provide an estimate of the cost for the construction of the requested sidewalk. The town council shall also appropriate funds for the construction of the requested sidewalk if approved for construction.

(3) Assessments shall be in accordance with G.S. 160A-218. Assessments levied pursuant to this article may be paid in cash or, at the option of the property owner, in two equal annual installments bearing interest at the statutory rate of eight percent per annum. The assessments shall be due and payable within 30 days after publication of the notice that the assessment roll has been confirmed without interest. Any property owner desiring to do so may elect within this 30-day period to pay the assessment in two equal annual installments with the first being due the following September 1 and the second installment due one year thereafter.

(b) The town council shall, from time to time, establish a priority order for the installation of paved sidewalk improvements based upon the sidewalk rating system. Once a priority order for the installation of sidewalks is established, or as it may from time to time be altered by the town council, the council will order installation of sidewalks in accordance therewith from time to time as funds are available for such installations.

(c) Paved sidewalks installed under this article by the town shall meet all the following criteria:

(1) The street along which the paved sidewalk is to be installed shall be paved and have curb and gutter along both sides.

(2) There shall be at least six feet of right-of-way between the back of curb and the adjoining property line.

(3) The sidewalk shall be installed in accordance with the town standard specifications and details manual.

(Code 1976, § 14-25; Code 1982, § 17-31; Ord. No. 92-41, § 1, 8-12-1992; Ord. No. 94-013, 5-12-1994; Ord. No. 2019-Code-04, 10-10-2019)

Secs. 28-47—28-65. Reserved.

ARTICLE III. STREET PAVING

Sec. 28-66. Paving with a petition.

(a) The council will not consider the paving of any street (any of said paving designated as improvements) unless and until a petition shall be submitted requesting one or more of said improvements, specifically, signed by more than 50 percent of the number of owners who represent

more than 50 percent of all the lineal feet of frontage of the lands, abutting upon the portions of the street or streets or upon the sidewalks proposed to be so improved. Improvements requested in the petition shall be clearly defined and the petition shall refer to the authority of article 10, chapter 160A, section 160A-216 et seq., General Statutes of North Carolina (G.S. 160A-216 et seq.). The petition shall be filed with the town clerk for submission to the council and the council will consider and act upon such petition as soon as feasible after submission.

(b) The council will not accept or consider a petition for paving on any street which does not meet minimum width requirements according to the widths prescribed for street classification as follows:

(1) Major thoroughfare: 45 feet (back to back of curbs).

(2) Collector street: 35 feet (back to back of curbs).

(3) Commercial street: 35 feet (back to back of curbs).

(4) Residential street including dead-end streets: 27 feet (back to back of curbs).

(c) Property owners will not be required to pay for street paving in excess of the cost of paving the width of a residential street.

(d) Any improvements as above described shall include storm drainage and connections to water, sewer and gas mains by the respective properties as required by the council.

(e) After consideration of a petition, the council shall determine whether the improvements requested in such petition shall be made, and in the event the council shall approve such improvements, the following policy shall be applicable:

(1) The town will assess the abutting property for that portion of any improvements to be paid by the abutting property owners at an equal rate per foot of abutting property and shall proceed to collect the cost according to the provisions of Carolina G.S. Ch. 160A, art. 10 (G.S. 160A-216 et seq.)., except the full cost of curb cuts shall be assessed against the abutting property.

(2) In the event the council shall deem it necessary or advisable for gas, sewer and water extensions, or any of them, to be made from the mains in the street to the property lines before any improvement is constructed, such extensions may be made by the property owners upon reasonable notice given by the town. If not done by the property owners within the time limit, the town shall cause such extensions to be made and assessed against the property so connected.

(Code 1976, § 14-22; Code 1982, § 17-43; Ord. No. 84-12, §§ 1 5, 4-26-1984)

State law reference(s)—Determination of costs, G.S. 160A-226; corner lot exemptions, G.S. 160A-219.

Sec. 28-67. Resurfacing without a petition.

(a) Pursuant to the town charter, whenever it shall become necessary to resurface any street which has already been paved, the expense of resurfacing will be borne by the town. The project may be undertaken without the necessity of a petition. The installation of curbs, gutters and adequate storm drainage facilities shall be required on streets when they are resurfaced, unless the council orders that curbs and gutters be omitted, upon finding that installation of curbs and gutters is not feasible, due to one of the following reasons:

(1) Due to the topography of an area, the installation of curb and gutter would not serve to enhance the adequate drainage of the street and those areas abutting the street; or

(2) Due to the topography of an area, the installation of curb and gutter would result in unusual and excessive costs, due to unusually large amounts of earthwork; or

(3) Restrictions, such as the absence of sufficient right-of-way, do not allow the construction of a standard-width street; or

(4) Restrictions caused by the location within the right-of-way of large diameter trees or other stationary objects prevent the construction of a standard-width street without the destruction of such objects.

(b) The town council will assess the costs of the street improvements, exclusive of the costs incurred at street intersections, against the abutting property owners at an equal rate per front foot, as provided in this section of the Code.

(c) When a street improvement assessment project is undertaken along both sides of a corner lot, half the lineal footage on the shorter side, or 150 feet of the lineal footage on the shorter side, whichever is greater, shall be exempt from assessment.
(Code 1982, § 17-43.1; Ord. No. 84-12, § 5, 4-26-1984; Ord. No. 06-008, 4-27-2006)

Sec. 28-68. Alternate policy.

In addition to the provisions of section 28-67, and as an alternate paving policy, the town council shall have the authority, right and privilege, but not the duty, to pave at public expense, from any appropriate fund, dirt streets existing within the municipal limits of the town as of September 1, 1971. Any such paving authorized by the town council shall be based upon priorities established by the town council, and shall be based upon a finding of fact that such paving is necessary for the general health, safety and welfare of the citizens of the town. The council may require, in its sole discretion, that petitions be filed by adjacent property owners, who shall petition for and agree to pay the entire cost of all installation of curbing and guttering, storm drainage and other improvements required by the council.
(Code 1976, § 14-24; Code 1982, § 17-44)

Sec. 28-69. Curbs and gutters.

(a) All curbs and gutters hereafter installed in the town shall be standard curb and gutter 30 inches in width.

(b) Compaction tests meeting town standards and specifications for streets, including curb and guttering areas, shall be provided at the expense of the developer or owner when directed by the director of transportation and facilities.
(Code 1976, § 14-23; Code 1982, § 17-45; Ord. No. 2019-Code-04, 10-10-2019)

Secs. 28-70—28-96. Reserved.

ARTICLE IV. SIGHT DISTANCE OBSTRUCTIONS

Sec. 28-97. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Horizontal area shall mean the geometric area formed between the curb line, or the edge of pavement for streets without curb and gutter, and a line of sight extended from the horizontal location of the driver's eyes of the design vehicle as described in the town standards specifications and details manual.

Obstruction shall mean any structure, fence, signs, walls, shrub, bush, tree, flower, plant, cut slope, motor vehicle, or any other object that obscures, impairs or prevents view or sight through, over and across the sight distance area as herein defined.

Sight distance shall mean the length of roadway visible to the driver who is traveling along the roadway or waiting to enter or cross the roadway.

Sight triangle shall mean the horizontal area and the vertical area and shall exist at all street intersections and all driveways serving multifamily and nonresidential property.

Stopping sight distance shall mean the minimum distance required for a driver to stop a vehicle traveling along the roadway at the design speed before reaching a stationary object in its path based upon a wet pavement condition and the grade of the roadway.

Vertical area shall mean the area between three feet six inches and ten feet above the horizontal area measured from the elevation of the intersecting streets. However, along crest vertical curves, objects lower than three feet six inches may affect sight distance.
(Code 1976, § 14-37 (1 4); Code 1982, § 17-76; Ord. No. 93-06, § 1, 2-11-1993)

Sec. 28-98. Sight distance.

(a) Sight distance requirements shall be in accordance with the criteria outlined in the town standard specifications and details manual, including all amendments approved by the town council. The town shall review all proposed development plans, including site, subdivision, landscape plans, infrastructure plans and sign plans for compliance with the requirements of the town standard specifications and details manual.

(b) These requirements shall be applicable within the corporate limits of the town along all town-maintained streets. All new development within the town's extraterritorial zoning jurisdiction shall meet these requirements as a part of the plan approval process (see unified development ordinance).
(Code 1976, § 14-38; Code 1982, § 17-77; Ord. No. 93-06, § 1, 2-11-1993)

Sec. 28-99. Exceptions.

(a) This division may not apply to all objects located within sight distance areas such that some objects may not significantly obstruct the required visibility of the driver. The driver may be able to see over, under or around some objects within sight distance areas. Objects that may be required within sight distance areas include fire hydrants, utility poles and traffic control devices which are located to minimize visual obstruction. Other objects 12 inches in diameter and smaller, such as tree trunks and sign posts, may be allowed within sight distance areas if located individually or in combination so as to not substantially restrict the driver's view. The determination of what objects, if any, may be located within sight distance areas shall be made by the director of transportation and facilities. Trees greater than 12 inches in diameter and located in the street right-of-way shall be evaluated in accordance with other applicable town policies and requirements.

(b) It is recognized that in some cases conditions may exist that prevent the attainment of desirable sight distance due to social, economic or environmental consideration. In such cases, the maximum practical sight distance, up to the desirable values, shall be obtained. In addition, where desirable sight distance is not attained additional measures, such as warning signs, reduced speed zones and other traffic controls may be imposed. In all cases, unless otherwise provided by ordinance or granted an exemption, the minimum provision of adequate stopping sight distance shall be required. Conditions existing within the town's B-1 business district prior to the adoption of this division revision (February 11, 1993) shall be exempt from these requirements, but shall, if practical, meet the requirements as a part of any site development or building alteration.
(Code 1976, § 14-40; Code 1982, § 17-78; Ord. No. 93-06, § 1, 2-11-1993; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 28-100. Removal of obstruction

The town shall remove sight distance obstructions located within the right-or-way of town-maintained streets. The town will notify the state department of transportation of sight distance obstructions located within the right-of-way of state-maintained roadways. The town shall provide written notification to the property owner(s) on which a sight distance obstruction exists on private property. The property owner shall be responsible for the prompt removal of the obstruction on their property and shall be solely liable for any and all consequences resulting from their negligence and/or failure to remove the obstruction.
(Code 1976, § 14-39; Code 1982, § 17-79; Ord. No. 93-06, § 1, 2-11-1993)

Secs. 28-101—28-128. Reserved.

ARTICLE V. EXCAVATIONS*

Sec. 28-129. Permit to alter street.

(a) No person other than authorized employees of the town shall dig any hole, ditch or excavation or make any alteration, or apply any foreign matter including, but not limited to, any form of oil or sand, rock, dirt or concrete, to any street in the town without first obtaining the written permission of the town manager or designee.

***State law reference—**Authority of town to regulate excavations in streets or sidewalks, G.S. § 160A-296(a)(6).

(b) No person shall place in, along, across or under any street, sidewalk or other public right-of-way any pipe, pole, wire, fixture or appliance of any kind, unless a written permit therefor has been issued by the town manager or designee, except where such work is performed under a contract with the town. All persons desiring a permit shall make written application therefor, which application shall show the location of the proposed pipe, pole, wire, fixture or other appliance and the approximate number of square yards of surface to be cut, if any.

(c) No person shall install, construct or pave a driveway across any public sidewalk, walkway, parkway or right-of-way, or into any street or alley, or cut any curb for the installation, construction or paving of a driveway without first obtaining a permit therefor from the town manager or designee. All driveway entrances, curb cuts and restorations shall be performed in accordance with town standards.

(d) All applications for permits pursuant to this section shall be accompanied by a permit and inspection fee as outlined in the fee schedule, which is adopted with the fiscal year budget. Any person making application for a permit pursuant to subsection (a) or (b) of this section shall, before such permit is issued, file with the inspections and permit office a deposit of money, cashier's check or a bond in some surety company authorized to do business in North Carolina in the amount of 1 1/2 times the director of transportation and facilities' estimated cost of the work to be done, guaranteeing the faithful performance of such work. The requirement for a deposit or bond shall not apply to the application for a Permit for Minor Encroachment pursuant to Sec. 28-167.
(Code 1976, § 14-14; Code 1982, § 17-91; Ord. No. 79-6, §§ 1, 2, 7-12-1979; Ord. No. 2012-Code-07, 12-13-2012; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 28-130. Maintenance of cuts.

A person making a cut under this article shall remove all of the surface material and earth excavated and leave the surface of the street and parking area in a neat, sightly and clean condition.
(Code 1976, § 14-20; Code 1982, § 17-92)

Sec. 28-131. Safety devices—Required.

No person making any excavation in any street, public alley or sidewalk shall fail to securely cover such excavation with planks or place ropes around the same three feet from the ground or fail to place an adequate number of red lights or flares around such excavation before dark and keep such lights or flares burning all night when such excavation shall be open.
(Code 1976, § 14-15; Code 1982, § 17-93)

Sec. 28-132. Same—Tampering, etc.

No person shall:

(1) Remove, tear down or in any way interfere with any danger light, fence or barrier provided for in this article;

(2) Drive or ride over or upon any streets, alleys, sidewalks or other public grounds so enclosed, while the same is being improved; or

(3) In any way damage, injure or tamper with any part of such work.
(Code 1976, §14-16; Code 1982, § 17-94)

Sec. 28-133. Handling of excavated material.

(a) In making excavations or making improvements in or to any street, sidewalk or public alley all material or earth removed and new material necessary for repairs or for new work shall be handled in a safe manner and placed where it will cause the least possible inconvenience to the public.

(b) In no case shall any of such material or earth be scattered over the surface of the pavement.
(Code 1976, § 14-21; Code 1982, § 17-95)

Sec. 28-134. Street repair.

Every person who shall open or dig any ditch, trench, or hole on any paved street or public alley in the town shall restore said street or public alley in accordance with the town's current "Standard Specifications and Details" and the same shall be approved by the town manager. Every person who shall open or dig any ditch, trench, or hole on any public sidewalk or other public grounds shall backfill said ditch, trench, or hole in accordance with the town's current "Standard Specifications and Details" and shall restore said sidewalk or public grounds to at least as good a condition in all respects as it was before, and the same shall be approved by the town manager.
(Code 1976, § 14-18; Code 1982, § 17-96; Ord. No. 85-14, § 1, 6-13-1985)

Sec. 28-135. Failure to make repairs promptly.

No trench or opening made on any of the paved streets, alleys, sidewalks, or other public grounds shall remain open longer than is absolutely necessary and in no event more than three days, except by special written permission of the town manager. If a cut remains open for longer than three days, maintenance of same shall be executed by the town's forces at the expense of the person making the cut if no extension of time was granted by the town manager or no maintenance service was rendered within two hours of being notified to refill cut or the person making the cut could not be notified when maintenance is necessary for the public safety. The schedule of maintenance and repair fees shall be set by the town council.
(Code 1976, § 14-19; Code 1982, § 17-97; Ord. No. 85-14, § 2, 6-13-1985)

Secs. 28-136—28-153. Reserved.

ARTICLE VI. ENCROACHMENTS

Sec. 28-154. Purpose and intent.

The purposes for, and intentions behind this article, are as follows:

(1) The public streets, whose primary purpose is movement of vehicular and other traffic, are valuable public resources that have required, and will continue to require, substantial investment by the town; and

(2) The town desires to structure and implement a fair and orderly process for the application for, and granting of, permission for private parties to occupy and use the public street or street rights-of-way, consistent with applicable law, and which appropriately accounts for the varied reasons that private parties seek such permission.

(3) The town desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the public streets and street rights-of-way, now and in the future, and to preserve adequate capacity for existing and future uses of the public streets and street rights-of-way.

(4) The town intends to exercise, to the fullest extent permitted by applicable law, its authority in regulating the occupation and use of public streets and street rights-of-way.

(5) Consistent with the foregoing, the town desires to provide a simplified approval process for minor encroachments into streets, street rights-of-way by adjoining landowners and into utility and access easement interests of the town by the adjoining landowner where the landowner owns the property that is subject to the town's easement interest, as provided in Sec. 28-167.

(Code 1982, § 17-101; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-155. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Encroach or *encroachment* means any digging in public streets or street rights-of-way, or the placing therein, thereover or below any pipes, poles, wires, fixtures or other appliances of any kind, either on, above, or below the ground surface. It also includes such digging and placing of pipes, poles, wires, fixtures or other appliances of any kind on, above or below the ground surface in areas in which the town has a utility or access easement, unless such activity is permitted by the applicable easement.

Minor Encroachment means an encroachment for irrigation systems, fencing and landscape plants and material provided all of the following requirements are met:

(i) A Minor Encroachment is only available to an adjacent property owner for encroachments into (a) public streets and street rights-of-way or (b) town utility or access easement areas when the property owner owns the underlying fee,

(ii) There is no disruption, even temporarily, of traffic flow,

(iii) There is no impact to paved or concrete surface,

(iv) There is no impact to the Town's ability to maintain or operate public streets, street rights-of-way or its easement interests.

Person shall mean an individual, partnership, association, organization, corporation or any other legal entity including any lawful successor transferee of said individual or entity.

Public streets means the public streets, sidewalks, alleys, bridges and other ways of public passage within the town's corporate limits, except for any such streets or bridges over which authority and control is exercised by the board of transportation.

Street rights-of-way or a *street right-of-way* means the real property interest the town holds over or adjoining existing public or private streets, or in corridors reserved for future public streets.

Town manager means the manager or assistant manager of the town of Cary or their designee.
(Code 1982, § 17-102; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-156. Permission to encroach, through appropriate agreement, required.

(a) It shall be a violation of this article for any person to encroach upon any public street, street rights-of-way or town easement areas without first receiving permission to do so from the town pursuant to this article.

(b) Permission to encroach shall be granted in appropriate cases through the terms of a non-exclusive, revocable encroachment permit or encroachment agreement, to be signed by the applicant and the town manager, using whatever form the town devises for that purpose. However, if the applicant must also receive a franchise for their intended business or activity from the town, permission to encroach upon a public street or street right-of-way may be granted through the terms of an appropriate franchise agreement.
(Code 1982, § 17-103; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-157. Application for permission to encroach.

(a) Application for permission to encroach upon a public street or street right-of-way shall be submitted to the town manager, and shall be submitted on any form the town devises for that purpose.

(b) All persons desiring authorization to encroach upon a public street or street right-of-way must provide the town with the following information:

(1) Identify the relevant public street or right-of-way;

(2) A description of the items the person desires permission to install in the public street or right-of-way, and the purpose those items would serve;

(3) A description of how the person intends to install the item in the public street or street right-of-way, including whether any excavation in the public street or right-of-way will be required;

(4) Whether installation of the relevant items will cause any temporary disruption in traffic flow in any public street, and if so, what precautions the applicant intends to take to minimize that disruption, and to protect human safety;

(5) A site plan, with sufficient detail to show the proposed location of the items the applicant seeks permission to install in the public street or street right-of-way, including any manholes or overhead poles, the size, type and proposed depth of any conduit or other enclosures, and the proximity of the applicant's items, if installed, to all existing poles, utilities, sidewalks, pavement, telecommunications or cable systems, and other improvements existing in the relevant public streets or street rights-of-way;

(6) A proposed construction schedule and sequence;

(7) Identify and describe any insurance the person has, or would obtain if granted permission to encroach on the relevant public street or street rights-of-way, that will cover his desired activities in the public street or street rights-of-way. (Homeowners seeking permission to encroach on a street right-of-way adjoining their residence should check their homeowners' policy in this regard);

(8) The name, address and telephone number of the person the town may contact concerning the application; and

(9) Such other information as the town may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.

(c) Business and other commercial applicants, in addition, should submit the following information:

(1) A general description of the person's business; and

(2) A description of the services, if any, the person proposes to provide to others through the infrastructure he desires permission to install in the right-of-way, identifying also the geographic scope in which such services would be provided, and to whom they would be provided.

(d) Any person who must also receive a franchise from the town for their intended business or activity may provide the information set forth above in their franchise application.

(e) The town may reject any application to encroach upon a public street or street right-of-way that is incomplete or otherwise fails to comply with the terms of this article or other applicable law.
(Code 1982, § 17-104; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-158. Public availability of applications to encroach.

Applications and other submissions by which any person seeks permission to encroach upon any public street or street right-of-way, including any additions, modifications or amendments thereto, shall be available for public inspection at the town engineering department during normal business hours.
(Code 1982, § 17-105; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-159. Procedure for consideration of, and action on, applications.

(a) The authority to grant a private party permission to encroach upon a public street or street right-of-way shall be exercised by the town manager or designee. In the manager's discretion, however, the town manager may submit any application for permission to encroach for review and an initial decision to the town council, with or without a recommendation from the town manager. In such cases, the grant of authority, if given, will be made by adoption of a resolution by the town council. In any case, the grant of such authority shall be conditioned upon such terms as shall be specified in the relevant encroachment or franchise agreement.

(b) The town may make such investigations and take or authorize the taking of such other steps as they deem necessary or appropriate to consider and act upon applications to encroach upon a public street or street right-of-way and determine whether such applications should be granted.

(c) If a business or commercial applicant seeks permission to encroach upon public street or street right-of-way, the town may set a public hearing to give the public an opportunity to comment on the application.
(Code 1982, § 17-106; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-160. Factors for review of application to encroach.

(a) In deciding whether to grant any application for permission to encroach upon any public street or street right-of-way, the town may consider such factors as it deems appropriate and in the public interest, provided such factors are consistent with applicable law, including without limitation:

(1) The willingness and ability of the applicant to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the encroachment;

(2) The ability of the applicant to maintain the property of the town in good condition throughout the term of the relevant franchise or encroachment agreement;

(3) Any services or uses of the public streets or street rights-of-way that may be precluded by the grant of the requested permission to encroach, and the adverse impact of the proposed encroachment on the efficient use of the public streets and street rights-of-way at present and in the future;

(4) The adequacy of the terms and conditions of the proposed encroachment or franchise agreement to protect the public interest, consistent with applicable law; and

(5) Any other public interest factors or considerations that the town has a lawful right to consider and that are deemed pertinent by the town for safeguarding the interests of the town and the public.

(b) Consistent with applicable law, the town may develop and implement policies and requirements to ensure that the public streets have sufficient capacity reasonably to accommodate existing and future uses in a rational and efficient manner. In evaluating an applicant for the right to encroach upon a public street or street right-of-way, the town may consider an applicant's proposals for addressing capacity needs and compliance with town policies and requirements in that regard.
(Code 1982, § 17-107; Ord. No. 00-031, 12-14-2000)

Sec. 28-161. Indemnity, insurance and bonding requirements, and other terms and conditions.

(a) No permission to encroach on any public street or street right-of-way shall be granted unless, as a condition to that grant, the applicant is willing to and agrees to indemnify, defend and hold harmless the town, its officers, boards, commissions and employees against any and all claims and liabilities arising from the person's activities or items in the public street or street right-of-way, including reasonable attorneys fees and court costs.

(b) Depending upon the extent of a person's desired excavation, construction or other activities in any public street or street rights-of-way, the town may exercise its authority to require an applicant to secure and provide documentation of an appropriate performance bond or letter of credit, and/or insurance, covering such activities, pursuant to terms acceptable to the town.

(c) The other terms and conditions by which the town grants a person authority to encroach upon a public street or street right-of-way shall be set forth in the relevant permit, encroachment or franchise agreement.
(Code 1982, § 17-108; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-162. Responsibilities of persons granted permission to encroach.

It shall be the responsibility of each person granted permission to encroach upon a public street or street right-of-way to:

(1) Ensure that any excavation, construction or other work done by them or on their behalf in the relevant public street rights-of-way is performed consistent with the town's published standard specifications and details for construction activities, including the requirements therein regarding restoration of the affected area.

(2) If requested by the town due to a need for the town or its contractors to complete any work in a public street or street right-of-way, temporarily remove or relocate their items located below or above the public street, or within the street right-of-way.

(3) Otherwise comply with the terms of their encroachment permit or agreement or the encroachment provisions in their franchise agreement, and all applicable laws, ordinances, resolutions, rules, regulations and other directives of the town and any federal, state or local governmental authority having jurisdiction over the person's activities in or near such rights-of-way.
(Code 1982, § 17-109; Ord. No. 00-031, 12-14-2000; Ord. No. 2012-Code-07, 12-13-2012)

Sec. 28-163. Authority to encroach is nonexclusive.

Any grant of permission to encroach upon a public street or street right-of-way given by the town pursuant to this article shall be nonexclusive. The town specifically reserves the right to grant, at any time, such additional rights of access to the public streets or street rights-of-way that it deems appropriate.
(Code 1982, § 17-110; Ord. No. 00-031, 12-14-2000)

Sec. 28-164. Remedies.

In the event that any person encroaches upon a public street or street right-of-way without prior permission from the town, or violates the conditions by which authority to do so were granted by the town, or otherwise violates any provision of this article, the town manager or designee may, in addition to any other remedies provided by any other applicable article or other law:

(1) Issue an order to the person commanding them to immediately cease and desist their unpermitted or otherwise wrongful activities in the public street or street right-of-way, and to restore the affected area;

(2) Revoke any permission previously granted allowing the permission to encroach in a public street or street right-of-way;

(3) Issue civil penalties up to $500.00 per day for any continuing violation of this article; or

(4) Any combination of the above-referenced remedies.
(Code 1982, § 17-111; Ord. No. 00-031, 12-14-2000)

Sec. 28-165. Reserved.

Sec. 28-166. Applicability.

To the extent permitted by law, the town may determine to apply all or certain provisions of this article to persons granted permission to encroach upon a public street right-of-way before the effective date of the ordinance from which this article is devised.
(Code 1982, § 17-113; Ord. No. 00-031, 12-14-2000)

Sec. 28-167. Minor Encroachments.

(a) Minor Encroachments, in part because of their limited applicability and the fact that they apply only to private property abutting street rights-of-way, are unlikely to create much, if any, impact on the orderly and efficient use of the public street rights-of-way, particularly if done in accordance with clearly established requirements. Therefore, the town manager may grant an adjacent property owner ('Applicant') a non-exclusive, revocable permit to encroach into street rights-of-way as necessary for the installation of parts of irrigation systems, fences and landscaping plants and materials. The manager may also consent to such encroachments into town access and utility easements, provided the Applicant owns the underlying fee.

(b) All applications for a permit for Minor Encroachment shall be in writing on such form as the town may require and shall be subject to and in accordance with this Article and Article V, except no performance bond or letter of credit shall be required.
(Ord. No. 2012-Code-07, 12-13-2012)

Secs. 28-168—28-185. Reserved.

ARTICLE VII. PARADES AND PICKETING

Sec. 28-186. Definitions.

For the purposes of this article, the following terms shall be defined as follows:

Block shall mean that portion of any street lying between its intersections with other streets.

Chief of police shall mean the chief of police of the Town of Cary, or designee.

Parade shall mean any parade, march, or procession of any kind, in or upon the public streets involving more than four pedestrians or more than three vehicles; provided, however, the term shall not include:

(1) Funeral processions;

(2) Students going to or from classes or participating in educational or recreational activities where such activity is under the supervision and direction of proper school authorities;

(3) Foot races and bicycle races involving no more than ten participants;

(4) Bands and marching groups proceeding to an assembly point for participation in a parade;

(5) The activities of any governmental agency acting within the scope of its authority;

(6) Picketing, as such term is defined in this article; and

(7) A parade that is conducted under the sponsorship of the town.

Picket line, picketing and *pickets* shall mean demonstrations, demonstrators, persons participating in vigils, and other persons primarily promoting or objecting to a policy or public issue whose actions take place entirely upon the sidewalks or, if there is no sidewalk, those portions of the public ways not used primarily for vehicular parking or moving traffic and are conducted within a single block.
(Code 1982, § 12-213; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-187. Parade permit required (small parade exception).

It shall be unlawful for any person to organize, conduct or participate in any parade, in or upon any public street within the town limits, unless a permit therefore has been issued by the chief of police in accordance with the provisions of this article. A parade permit shall not be required for any parade consisting of fewer than 4 pedestrians or 3 vehicles; however, notice of such small parade may be made in accordance with Section 28-202.
(Code 1982, § 12-214; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-188. Unlawful participation.

It shall be unlawful for any person to conduct or participate in any parade except in conformance with the provisions of this article.
(Code 1982, § 12-215; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-189. Permit—Possession and display.

The person in whose name the permit has been issued shall carry the permit for the parade upon his or her person during the conduct of the parade.
(Code 1982, § 12-216; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-190. Same—Application.

(a) A written application, on a form supplied by the town, shall be made to the chief of police by persons desiring to have a parade. Such application shall be submitted at least 72 hours, but not more than 90 days, in advance of the date on which the parade is proposed to occur. Notwithstanding the preceding, where good cause is shown for inability to make application at least 72 hours in advance, and when the chief of police finds that the time from the date of filing is sufficient for the town to prepare for the parade pursuant to the standards set forth in this article, the chief of police shall consider applications filed after the deadline, in accordance with the provisions of this article.

(b) Employees of the police department of the town shall indicate on the face of the application the time of receipt by the police department. The application shall be signed by the applicant and shall include the following:

(1) The name, address and telephone number of the applicant;

(2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of both the headquarters of the organization and of its authorized head, and a local number for the organization if there is one;

(3) The name, address and telephone number of the person to be present and responsible for the conduct of the parade (who is referred to in this article as "parade leader"), and, if the parade leader is someone other than the applicant, the application shall be signed by both the applicant and the parade leader;

(4) The date the parade will be held;

(5) The proposed location, by street number or intersection, of any assembly areas for such parade;

(6) The proposed time at which units of the parade will begin to assemble at any such assembly area(s);

(7) The proposed times at which the parade will begin and terminate;

(8) The proposed route to be traveled, the starting and terminating points, or the location of the parade if there is no traveling;

(9) A statement as to whether the parade will occupy all or a portion of the width of the streets, sidewalks, parks, alleys, or other public places proposed to be traversed or occupied;

(10) The approximate number of persons, animals and vehicles expected to participate, and the type of animals and a description of any vehicles;

(11) Any alternate date proposed in case of inclement weather or other emergency conditions arising between the date of permit issuance and the event date;

(12) Any additional information which the chief of police shall find reasonably necessary to a fair determination as to whether a permit shall be issued.

(c) The application, and information provided therein, shall be a part of any permit that is granted.

(d) If the parade will create noise which will violate the noise control ordinance of the town, a noise permit, issued pursuant to this Code, must also be obtained.
(Code 1982, § 12-217; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-191. Same—Issuance.

(a) Unless the chief of police makes one or more of the findings specified below, a permit, on a form supplied by the town, shall be issued to the applicant. The permit shall be issued in the name of the applicant, or in the name of the parade leader, if different from the applicant. The permit shall be deemed issued under the terms and for the purposes stated in the application, unless otherwise noted. The permit shall set the duration, speed of travel, and space between persons or vehicles in the parade; may prescribe the portions or areas of streets, alleys, sidewalks or other public places to be used; and may impose such other reasonable requirements necessary for the control and free movement of pedestrian and vehicular traffic, including emergency services, to protect the safety and property rights of participants and of the general public. The town reserves the right and authority to have police officials on the scene to further designate (expand or limit) permitted area(s) in furtherance of the ordinance in the best interest of all parties involved.

(b) The application for a permit shall be issued by the chief of police, unless the chief, based on specific facts stated, makes any of the following findings in writing:

(1) Adequate provision cannot be made for the safe and orderly movement of the parade and for other traffic, pedestrian and vehicular, contiguous to its route;

(2) The parade cannot be held without unreasonable interference with the provision of normal police or fire protection or emergency services to the public;

(3) The parade cannot be held without unreasonable interference with the right of property owners in the area to enjoy peaceful and lawful use and occupancy of their property;

(4) The standards set forth in section 28-196 will not be met;

(5) The parade will require the closing of, or unreasonably restrict the flow of vehicular traffic along, a highway under the control of the state. If this is the case, the applicant should seek permission from appropriate state officials prior to making reapplication for a parade permit.

(c) In the event the chief of police denies an application, the chief shall so notify the applicant, in writing, specifying the reason(s) for the denial. Such notice of denial shall be mailed to the applicant at the address shown on the application. If the parade is proposed to be held within five days of the date of the notice of denial, the chief of police shall also cause the police department to make a reasonable attempt to notify the applicant of the denial by telephone, or other appropriate means.
(Code 1982, § 12-218; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-192. Same—Alternate.

The chief of police, in denying an application as submitted, may grant a permit for a date, time, place, or over a route different from that named by the applicant, or may impose requirements and conditions other than those contained in the application. An applicant desiring to accept an alternate permit shall, within 24 hours after notice of the denial and offer of an alternate permit, file with the chief of police a written notice of acceptance of the alternate permit, on a form supplied by the town. An alternate permit, once accepted, shall conform to the requirements and shall have the effect of a permit issued strictly in response to an application.
(Code 1982, § 12-219; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-193. Same—Notice to town upon issuance.

Immediately upon the issuance of a parade or picketing permit, the chief of police shall send a copy of such permit to the following persons:

(1) The town manager;

(2) The town attorney;

(3) The town fire chief;

(4) The town director of public works; and

(5) Public information officer.
(Code 1982, § 12-220; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-194. Processing time of permit applications; notice of action.

Applications shall be processed and permits, or denials thereof, issued as expeditiously as possible, and in no event more than 48 hours after receipt of the complete application. If the application was submitted more than 15 days in advance of the parade, the permit, notice of denial of the permit, or notice of permit denial and offer of alternate permit, shall be mailed by first class mail to the applicant at the address shown on the application. In all other cases, the police department shall, in addition to mailing, exercise reasonable diligence to attempt to notify the applicant by telephone, or other reasonable means of communication, of the action taken as soon as possible.
(Code 1982, § 12-221; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-195. Appeal.

(a) Any person aggrieved by action taken pursuant to this article may file a written "notice of appeal of the action of the police chief" with the town manager within 5 business days of the Police Chief's action. Such written notice shall identify the person filing the appeal and shall specify with particularity the facts and basis for the appeal. The town manager shall act on the appeal as expeditiously as possible.
(Code 1982, § 12-222; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008; Ord. No. 2019-Code-03, 9-26-2019)

Sec. 28-196. Standards of conduct for parades.

All applicable laws and regulations and the following standards shall apply to all parades conducted in the town:

(1) No more than one parade may be conducted within the town at any one time;

(2) The prohibitions contained in G.S. 14-277.2 against possession of dangerous weapons shall be strictly enforced; and

(3) No person shall cause or permit a vicious animal to participate in, or proceed along the route of, a parade.

(4) No parade may be conducted on weekdays between the hours of 7 am to 9 am, or between 4 pm to 6 pm, or on holidays and weekends before 9 am. All parades must be conducted during daylight hours.

(Code 1982, § 12-223; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-197. Revocation of permit.

The chief of police may revoke any permit granted for a parade for the following causes:

(1) The substantial violation of this article or the terms and conditions of the permit; or

(2) The violation of other laws by those participating in the parade.
(Code 1982, § 12-224; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-198. Vending along parade routes or at picket locations prohibited.

It is unlawful for any persons to sell or offer for sale any goods, wares, or merchandise in or on any portion of the adjacent streets, sidewalks, or rights-of-way of a parade or picketing location during the times that a parade or picket is in progress and for 30 minutes before and for 30 minutes after the end of the parade or picket.
(Code 1982, § 12-225; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-199. Interference prohibited.

No person shall hamper, obstruct, impede, or interfere with any parade being conducted under authority of a lawfully issued permit. No driver of any vehicle shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and identifiable as a parade under this article. No person shall hamper, obstruct, impede, or interfere with any picket line or picketing lawfully conducted.
(Code 1982, § 12-226; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-200. Signs.

Signs or posters carried by participants in a parade, picketers, or by bystanders shall be made of cardboard no thicker than one-fourth-inch. Signs may be no larger than 24 inches by 24 inches. Supports for such signs or posters shall be made of a nonmetallic material no larger than 3 1/2 inches by one inch.
(Code 1982, § 12-227; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-201. Parking restrictions.

The chief of police, when reasonably necessary, may prohibit or restrict the parking of vehicles along a street or highway constituting a part of the route of a parade or picket. The chief of police shall cause signs to be posted to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street if such signs are posted less than 12 hours in advance.
(Code 1982, § 12-228; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-202. Picketing—Permitted; conditions.

Peaceful picketing shall be permitted in the town, provided such picketing is done in accordance with the following conditions:

(1) Except for the small group exception set forth below, no picketing shall be conducted on the sidewalks or public ways of the town and no person shall participate in picketing unless notice of intent to picket has been given to the chief of police and a receipt for such notice has been issued and is carried at the picket by the person to whom issued;

(2) A group consisting of fewer than ten persons may picket without providing a notice of intent to picket ('small group exception'), although such notice is encouraged to enable the Town to plan and prepare to protect the safety and property rights of participants and of the general public;

(3) The notice of intent to picket shall contain the following information:

a. The name, if any, of the organization or group sponsoring or proposing to picket, unless the group desires anonymity, in which case no name is required.

b. The location or locations, by block, in the town where the pickets propose to assemble and picket;

c. The date(s) and hour(s) during which the picketing is to occur; and

d. The identity of person(s) organizing or otherwise in charge of the picketing activity, unless anonymity is desired and the name of the participant who will carry the receipt of notice at the picket.

(4) It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual.

(Code 1982, § 12-229; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-203. Same—Receipt of notice of intent; cessation.

(a) Upon the receipt of a notice of intent to picket, properly completed as specified herein, the chief of police or their designee shall immediately issue a receipt of notice. The receipt of notice shall contain all information stated in the notice of intent to picket.

(b) In the event picketing ceases for 24 hours or more, a new notice of intent to picket and receipt of notice shall be required before resumption of picketing.

(c) To enable the Town to plan and prepare to protect the safety and property rights of participants and of the general public a group of 50 or more persons desiring to picket must provide written notice at least 24 hours in advance of the commencement of picketing.

(Code 1982, § 12-229.1; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-204. Same—Receipt of notice, compliance required.

It shall be unlawful for any person to conduct or participate in any picketing in the town unless in the company of the person to whom a receipt of notice of intent to picket has been issued, unless the person qualifies under the small group exception. It shall be unlawful for any person to conduct or participate in picketing except in compliance with the provisions of this article.

(Code 1982, § 12-229.2; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-205. Same—Standards of conduct for activities.

(a) Picketing shall be conducted only on the sidewalks or portions of the public ways not used primarily for vehicular parking or moving traffic.

(b) Picketers may carry written or printed placards or signs, provided such signs meet the requirements set forth in section 28-200 above.

(c) If pickets promoting different objectives, causes, actions, or policies desire to use a sidewalk that is already used for picketing, the chief of police shall allot time to each group of pickets for the use of the sidewalk on an equitable basis.

(d) Pickets shall use the outermost half of the sidewalk or other public way nearest the street and shall not at any time, nor in any way, obstruct, interfere with, or block:

(1) Persons entering or exiting from vehicles;

(2) Persons crossing streets or otherwise using the public way;

(3) The entrance or exit of any building or access to property; or

(4) Pedestrian or vehicular traffic.

(f) No person picketing, or observing or assisting pickets, shall bring to the picket, or allow to remain in the area of the picket, any vicious animal.

(g) It shall be unlawful for any person engaging in picketing to carry, possess, or have in his or her immediate access any dangerous weapon, as such term is defined in G.S. 14-269, 14-269.2, 14-284.1 and 14-288.8.

(h) The town reserves the right and authority to have police officials on the scene to further designate (expand or limit) permitted area(s) in furtherance of the ordinance in the best interest of all parties involved
(Code 1982, § 12-229.3; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-206. Same—Interference with pickets prohibited; police authority to disperse crowds; failure to leave when ordered.

(a) It shall be unlawful for any person to physically interfere with pickets in the use of the sidewalk or to address profane, indecent, abusive, or threatening language to or at those pickets which would tend to provoke the pickets or others to a breach of the peace.

(b) The police officers of the town may, in the event of the assemblage of persons in such numbers as would tend to intimidate pickets pursuing their lawful objectives, direct the dispersal of persons so assembled and may arrest any person who fails to absent himself or herself from the place of assemblage when so directed by the police.

(c) Whenever the free passage of any street or sidewalk in the town shall be obstructed by a crowd, the persons composing such crowd shall disperse or move on when directed to do so by a police officer. It shall be unlawful for any person to refuse to so disperse or move on when so directed by a police officer as herein provided.
(Code 1982, § 12-229.4; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Sec. 28-207. Enforcement.

The town may enforce this article in any of the following ways:

(1) *Criminal enforcement.* By treating the violation thereof as a criminal misdemeanor, punishable as provided in section 1-9.

(2) *Civil enforcement.* By the levy of a civil penalty in the amount of $300.00. Civil penalties remaining unpaid after seven days may be collected by means of a civil action in the nature of debt.

(3) *Equitable remedies.* By pursuing equitable remedies that will issue from a court of competent jurisdiction.

(Code 1982, § 12-229.5; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

Secs. 28-208—28-209. Reserved.

ARTICLE VIII. DRIVEWAY CONNECTION PERMITS

Sec. 28-210. Purpose and intent.

The Town finds it to be in the public interest to regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into the public streets.

(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-211. Definitions.

Abandoned means use of the driveway connection has been discontinued for a period of 180 days or more.

Director means the Director of the Transportation and Facilities Department.

For good cause shown means situations or circumstances in which the driveway connection permit has not expired and the entity seeking the extension does not have direct and/or complete control of a related aspect of the project that is essential, and contributes, to completion of construction of the driveway connection. Examples of such situations shall include, but are not limited to:

- Appeal of an approval, permit or other similar decisions brought about by an entity other than the applicant and filed in accordance with all applicable procedures and requirements; and

- Inaction or delay by another governmental agency or approval authority with respect to the review/approval of a related or component aspect of the project.

Public streets or streets means the public streets, sidewalks, alleys, bridges and other ways of public passage within the town's corporate limits and extraterritorial planning jurisdiction.

(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-212. Driveway connection permit required.

(a) It shall be unlawful to construct, maintain, or use a driveway connecting to a public street except in accordance with the requirements of this Article, the Standard Specifications and Details Manual, and the terms and conditions of a valid and unrevoked driveway connection permit.

(b) A Town driveway connection permit is required for new driveway construction, modification of an existing driveway, or replacement of an existing driveway for all driveways that connect to Town maintained streets.

(c) A Town driveway connection permit for driveways onto Town-maintained streets is also required for any change in use of a site used for non-residential purposes when

(1) The current driveway is in disrepair and does not meet the Town minimum design;

(2) The change of use results in an additional 50 peak hour trips above the existing use;

(3) The existing driveway does not meet current ADA accessibility requirements; or

(4) There are significant changes to the parking layout, circulation patterns, or on-site vehicle storage associated with the change in use.

(d) Failure to secure a driveway connection permit in violation of this Article may result in closure of the driveway and/or removal of the driveway at the expense of the property owner.

(e) Any driveway constructed on a state-maintained street must also conform to the requirements of the current "Policy on Street and Driveway Access to North Carolina Highways" published by the North Carolina Department of Transportation.
(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-213. Permit application.

(a) Application for a driveway connection permit shall be made on any form the Town devises for that purpose and a fee may be charged for submission of the application. The driveway connection permit shall be reviewed and approved by the Transportation & Facilities Director, or a designated representative, prior to the issuance of any building permit for the erection, construction, remodeling, alteration, or change of use of the building, structure, or property utilizing the driveway.

(b) The following information must be provided with the application:

(1) A complete plan view of the site (drawn to engineering scale between 1:20 to 1:50) showing existing and proposed buildings with interior parking layout and traffic circulation patterns;

(2) Existing and proposed driveway locations and dimensions, including but not limited to:

i. Distance from other streets and driveways on both sides of street;

ii. Distance from property lines;

iii. Width of public right-of-way; and

iv. Curb radii.

(3) Profile of entrance and exit grades;

(4) Proposed pavement markings;

(5) Traffic control plans (if needed);

(6) Horizontal and vertical sight distance calculations and dimensions;

(7) Existing and proposed sidewalk, street side trails, bicycle paths, or other multi-modal features;

(8) Street names, right-of-way, pavement, and median widths and locations of street returns on corner lots;

(9) Proposed location of off-street loading and unloading zones;

(10) Retaining walls, drainage structures, utility poles, fire hydrants, traffic control cabinets, and other physical features which may affect the driveway location and sight distance;

(11) The type of proposed driveway and standard detail that applies; and

(12) Such other information as the Town may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.

(c) The Town may reject any application that is incomplete or otherwise fails to comply with the terms of this article or other applicable law.
(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-214. Requirements.

(a) All driveway connections must meet all requirements of this Article, the Standard Specification and Details Manual, and the terms and conditions of any Town-issued or NCDOT-issued driveway connection permit.

(b) The Town may require the dedication to the public and construction of medians, acceleration and deceleration lanes, and traffic storage lanes if (1) the need for such improvements is reasonably attributable to the traffic using the driveway; and (2) the improvements serve the traffic of the driveway.

(c) The Town may require an applicant to secure and provide documentation of an appropriate performance bond or letter of credit, and/or insurance, pursuant to terms acceptable to the Town.

(d) No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. However, if there is a conflict between the written driveway regulations of the Department of Transportation and the related driveway improvements required pursuant to this Article, the more stringent requirement shall apply.

(e) The owner of the property upon which a driveway is located shall maintain the driveway through its operational lifetime.
(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-215. Permit expiration, permit revocation, and driveway abandonment.

(a) Construction of a driveway connection must be completed within one year after the issuance of a driveway connection permit. An extension may be granted by the Transportation & Facilities Director for good cause shown. A request for an extension must be submitted in writing at least 14 days prior to the permit expiration date.

(b) A driveway connection permit may be revoked for failure to comply with this Article, the Standard Specifications and Details Manual, or the terms and conditions of a driveway connection permit. If a driveway connection permit is revoked, the Town may require the permittee or property owner to physically eliminate the driveway and replace or repair the sidewalk, if applicable. If the permittee or property owner does not physically eliminate the driveway and replace or repair the sidewalk within a reasonable period of time, the Town may do so and charge the expense to the permittee or property owner.

(c) If a driveway connection is abandoned, the Town may require the permittee or property owner to physically eliminate the driveway and replace or repair the sidewalk, if applicable. If the permittee or property owner does not physically eliminate the driveway and replace or repair the sidewalk within a reasonable period of time, the Town may do so and charge the expense to the permittee or property owner.
(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-216. Appeals.

Appeal of a denial of a driveway connection permit shall be made in writing to the Town Manager within ten (10) days 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 written decision. Any appeal from the decision of the Town Manager or Deputy Town Manager shall be to the Superior Court for Wake County (or Chatham County if the subject property is located within that jurisdiction) by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the Court Clerk within thirty (30) days after the date of the decision.
(Ord. No. 2017-Code-01, 1-5-2017)

Sec. 28-217. Violations, penalties, enforcement.

In the event that any person constructs, maintains, or operates a driveway in violation of this Article, the Transportation & Facilities Director or designee may, in addition to any other remedies provided by any other applicable article or other law:

(1) Issue an order to the person commanding them to immediately cease and desist their unpermitted or otherwise wrongful activities;

(2) Revoke any permission previously granted permitting the driveway connection;

(3) Issue civil penalties up to $500.00 per day for any continuing violation of this Article; or

(4) Any combination of the above-referenced remedies.
(Ord. No. 2017-Code-01, 1-5-2017)

Chapter 29

RESERVED

Chapter 30

TAXATION

Sec. 30-1. Required; registration period; fee; penalty.

Sec. 30-1. Required; registration period; fee; penalty.

(a) Every motor vehicle listed for ad valorem taxes, as required by general statutes, resident in the town shall be billed and shall pay a separate vehicle license fee. The amount of the fee shall be contained within the annual operating budget of the town.

(b) The billing and payment of this fee will be along with ad valorem taxes. No sticker or decal will be required for display.

(Code 1976, § 16-2; Code 1982, § 12-27; Ord. No. 84-16, § 1, 8-23-1984; Ord. No. 85-20, § 1, 7-11-1985; Ord. No. 86-25(c), 6-26-1986; Ord. No. 88-14, § 1, 9-22-1988; Ord. No. 00-013, 6-28-2000)

State law reference—Municipal motor vehicle taxes, G.S. 160A-213, 20-97.

Chapters 31—33

RESERVED

Chapter 34

TRAFFIC AND VEHICLES*

Article I. In General

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Sec. 34-2. Authority of police in special cases.
Sec. 34-3. Government vehicles.
Sec. 34-4. Push carts/animal-drawn vehicles, etc.
Sec. 34-5. Exemptions to authorized emergency vehicles.
Sec. 34-6. Boarding or alighting while vehicle in motion.
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Sec. 34-8. Same—Without permission.
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Sec. 34-35. Notice of traffic violation.
Sec. 34-36. Civil penalty for violation.
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Sec. 34-72. Quiet zone.
Sec. 34-73. Recreational streets.
Sec. 34-74. Temporary street closings and designation of parking or no-parking zones due to special events.
Sec. 34-75. Traffic control signal preemption.
Secs. 34-76—34-93. Reserved.

***State law references—**Powers of local authorities as to traffic, G.S. 20-169; municipal traffic-control, G.S. 160A-300; municipal control of streets, G.S. 160A-296.

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Sec. 34-95. Warning devices on service vehicles.
Sec. 34-96. Parallel parking.
Sec. 34-97. Reserved parking spaces.
Sec. 34-98. Vehicles backed up to curb.
Sec. 34-99. Stopping with left side to curb.
Sec. 34-100. Parking within lines.
Sec. 34-101. Illegal parking.
Sec. 34-102. Advertising.
Sec. 34-103. Stopping, standing or parking prohibited in certain places.
Sec. 34-104. Fifteen-minute parking zones designated.
Sec. 34-105. One-hour parking zones generally.
Sec. 34-106. Two-hour parking zone.
Sec. 34-107. Parking prohibited in designated places—At all times.
Sec. 34-108. Same—During certain hours.
Sec. 34-109. Lights on parked vehicles.
Sec. 34-110. Stop before entering certain street intersections.
Sec. 34-111. Stop streets designated.
Sec. 34-112. Parking of oversized vehicles and trailers prohibited.
Sec. 34-113. Parks and recreation facilities; unauthorized parking.
Sec. 34-114. Town facilities; unauthorized parking.
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Article V. Operation of Vehicles Generally

Sec. 34-142. Vehicles emerging from alley or driveway.
Sec. 34-143. Vehicles moving from parked positions.
Sec. 34-144. Turning around.
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Sec. 34-147. Turning at channelized intersections.
Sec. 34-148. Commercial vehicles on certain streets.
Sec. 34-149. Speed limit on through highways and state maintained streets.
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Sec. 34-210. Removal of vehicle; post-towing notice requirements.
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Sec. 34-242. Obedience to traffic control devices.
Sec. 34-243. Manner of riding bicycle.
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Sec. 34-245. Emerging from alley or driveway.
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Sec. 34-247. Clinging to moving vehicles.
Sec. 34-248. Riding on handlebars, etc.
Sec. 34-249. Hands on handlebars; carrying articles.
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Sec. 34-255. Bicycle helmets required.
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Article XI. Schedules

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ARTICLE I. IN GENERAL

Sec. 34-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized emergency vehicles shall mean vehicles of the fire department, police department and such ambulances as designated or authorized by the chief of police.

Bicycle path shall mean, but shall not be limited to, that portion of a street between the roadway designated for motor vehicular traffic, curblines, or lateral lines of a roadway, and the adjacent property lines, intended for use by bicycles. Bicycle path shall also mean a linear open space along a natural or human-made corridor to which pedestrian and bicycle access has been granted for the purpose of public passive recreation or as a transportation corridor for bicycle traffic only.

Block shall mean a portion of any street located between two intersections next adjacent to each other.

Business district shall mean the territory contiguous to a road or street where 75 percent or more of frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business purposes, or as otherwise defined by ordinance of the state board of transportation.

Crosswalk shall mean that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Driver shall mean as provided in G.S. 20-4.01.

Greenway shall mean a linear open space along a natural or human-made corridor which is used for public passive recreation and under the jurisdiction of the town of Cary.

Intersection shall mean as provided in G.S. 20-4.01.

Motor vehicle shall mean as provided in G.S. 20-4.01.

Official trafficcontrol devices shall mean all signs, signals, markings and devices, not inconsistent with this chapter, placed or erected by authority of the town council or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Official traffic signals shall mean any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Park shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Pedestrian shall mean any person afoot.

Police officer shall mean every officer of the police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Private road or driveway, shall mean as provided in G.S. 20-4.01.

Public conveyance shall mean any vehicle other than a taxicab or railroad train for transporting for fare.

Public vehicular area shall mean as provided in G.S. 20-4.01.

Railroad shall mean a carrier of persons or property upon cars operated upon stationary rails.

Railroad train shall mean a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

Residential district shall mean the territory contiguous to a street not comprising a business district where 75 percent or more of the frontage on such street for a distance of 300 feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business, or as otherwise defined by ordinance of the state department of transportation.

Right-of-way shall mean the privilege of the immediate use of the roadway.

Roadway shall mean as provided in G.S. 20-4.01.

Safety zone shall mean as provided in G.S. 20-4.01.

Sidewalk shall mean that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Standing shall mean any stopping of a vehicle, whether occupied or not.

Stop, when required, shall mean complete cessation of movement.

Stop or stopping, when prohibited, shall mean any stopping of a vehicle except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic control sign or signal.

Street or highway shall mean the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic.

Traffic shall mean pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any street for purposes of travel.

Vehicle shall mean as provided in G.S. 20-4.01.
(Code 1976, §§ 16-1(1—28), 16-10; Code 1982, § 12-1; Ord. No. 87-103, § 1, 12-10-1987)
State law reference—Definitions, G.S. 20-4.01.

Sec. 34-2. Authority of police in special cases.

In the event of a fire or other emergency, or when necessary to expedite traffic or safeguard pedestrians, police officers may direct traffic as conditions may require, notwithstanding the provisions of this chapter.
(Code 1976, § 16-7; Code 1982, § 12-3)

Sec. 34-3. Government vehicles.

Unless otherwise provided in this chapter or by state statutes, the provisions of this chapter shall apply to the driver of any vehicle owned by, or used in the service of, the United States government, this state, county or town.
(Code 1976, § 16-9; Code 1982, § 12-4)
State law reference(s) Application of state traffic laws vehicles owned by government, G.S. 20-168.

Sec. 34-4. Push carts/animal-drawn vehicles, etc.

Every person propelling any push cart, or riding an animal, or driving any animal-drawn vehicle upon a roadway shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions which, by their very nature, can have no application.
(Code 1976, § 16-10; Code 1982, § 12-5)
State law reference(s) Application of state traffic laws to animals or animal drawn vehicles, G.S. 20-171.

Sec. 34-5. Exemptions to authorized emergency vehicles.

(a) The provisions of this chapter regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles, as defined in this chapter, except that a driver when operating such vehicle in an emergency, unless otherwise directed by a police officer, may:

(1) Park or stand, notwithstanding the provisions of this chapter.

(2) Proceed past a red or stop signal, or stop sign, but only after slowing down as may be necessary for safe operation.

(3) Exceed the speed limits so long as he does not endanger life or property.

(4) Disregard regulations governing direction of movement, or turning, in specified directions so long as he does not endanger life or property.

(b) The foregoing exemptions shall not protect the driver of any such vehicle from the consequences of his reckless disregard for the safety of others.
(Code 1976, § 16-11; Code 1982, § 12-6)

Sec. 34-6. Boarding or alighting while vehicle in motion.

No person shall board or alight from any public conveyance or other vehicle while such conveyance or vehicle is in motion.
(Code 1976, § 16-57; Code 1982, § 12-7)

Sec. 34-7. Riding—In passenger areas.

(a) No person shall ride on any public conveyance or vehicle or any portion thereof not designed or intended for the use of passengers.

(b) This section shall not apply to any employee engaged in the necessary discharge of a duty, or to persons riding within truck bodies in spaces intended for merchandise.
(Code 1976, § 16-58; Code 1982, § 12-8)

Sec. 34-8. Same—Without permission.

No person shall enter, jump on or ride in or on any automobile or other vehicle without the consent of the owner or driver.
(Code 1976, § 16-59; Code 1982, § 12-9)

Sec. 34-9. Same—Inside vehicle.

No person when riding shall allow any part of his body to protrude beyond the limits of the vehicle in which he is riding, except to give such signals as are by law required, and no person shall hang onto any vehicle whatsoever.
(Code 1976, § 16-60; Code 1982, § 12-10)

Sec. 34-10. Same—In front seat.

No driver or person in charge of any motor vehicle shall permit more than three persons (including the driver) to ride in the front or driver's seat of a motor vehicle.
(Code 1976, § 16-61; Code 1982, § 12-11)

Sec. 34-11. Roller skates; skateboards.

(a) It shall be unlawful for any person to use for riding or to ride or roll upon any roller skates, skateboard or similar device in or upon any public street, excluding sidewalks, on any day after sunset or before sunrise.

(b) It shall be unlawful for any person, being the parent or guardian of a minor, to suffer or permit such minor to violate subsection (a) of this section.
(Ord. No. 77-16, § 1, 5-12-1977; Code 1982, § 12-12)

Sec. 34-12. Schedule of traffic and parking regulations; incorporation by reference.

(a) Whenever the provisions of this chapter establish specific traffic and parking regulations and restrictions which are effective only upon certain streets, parts of streets or street areas which are not generally identifiable, or at certain times or for periods of time which are not generally applicable, such traffic and parking regulations, and the locations and/or times where and when the same are effective shall be set out upon official traffic schedules, as amended from time to time by the Town Council or the director of transportation and facilities as appropriate, and retained permanently in the office of the Town Clerk.

(b) All official traffic schedules adopted under the authority of this chapter are hereby incorporated by reference and shall be as effective as if set out in full herein. Such traffic schedules shall be deemed to be "technical ordinances" under the provisions of G.S. 160A-76(b).
(Ord. No. 2009-Code-06, 5-14-2009; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 34-13. Bus and passenger loading zones designated.

(a) The portions of streets described in Traffic Schedule 1, Bus and Passenger Loading Zones, are hereby designated as bus or passenger loading zones in some locations during specified hours.

(b) No person, except the operator of a public passenger transport bus, shall park, stop, allow to stand or leave unattended any vehicle within any bus loading zone.

(c) No person shall park, stop, allow to stand or leave unattended any vehicle in any passenger loading zone except for such reasonable time as may be required for a passenger to alight from or enter such vehicle.
(Code 1976, §§ 16-62, 16-63; Code 1982, §§ 12-13, 12-14; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-14. One-way streets designated.

(a) The streets or portions of streets described in Traffic Schedule 2, One-way Streets, are hereby designated as one-way streets.

(b) Vehicular traffic shall move on one-way streets only in the indicated direction, when signs indicating the direction of traffic are erected and maintained.
(Code 1976, § 16-64; Code 1982, § 12-15; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-15. Operation of vehicles on trails, etc.

It shall be unlawful for any person to ride or otherwise operate a motor vehicle, motorcycle, motor-driven cycle, or off-highway motor vehicle upon any trail, or bicycle trail designated as greenway which is publicly owned and maintained, or to which public access has been granted in any manner by any private property owner. This shall not include the operation of motor vehicles engaged in property maintenance or in other services authorized by the town.
(Ord. No. 87-103, § 2, 12-10-1987; Code 1982, § 12-16)

Secs. 34-16—34-33. Reserved.

ARTICLE II. PARKING VIOLATIONS BUREAU*

Sec. 34-34. Established.

(a) Pursuant to G.S. 14-4(b), violations of the parking regulations enumerated in this chapter are deemed infractions.

***State law references—**Uniform schedule of offenses set by Chief District Judges, G.S. 7A-148; costs in criminal actions, G.S. 7A-304; infractions applied to municipal ordinances regulating parking, G.S. 14-4; handicapped parking regulations, G.S. 20-37.6; parking prohibited in certain locations, G.S. 20-162; prima facie evidence rule for parking violations, G.S. 20-162.1; enforcement of ordinances by city, G.S. 160A-175; city authorized to regulate parking, G.S. 160A-301.

(b) As an alternative system of administering parking violations, there is hereby established under the supervision of the chief of police the parking violations bureau, which shall be located in the police headquarters section of the town government campus.
(Code 1982, § 12-41; Ord. No. 98-007, § 1, 6-11-1998)

Sec. 34-35. Notice of traffic violation.

Whenever a member of the town police department, or other person charged by ordinance or charter with the enforcement of the provisions of this code regulating the parking of vehicles, shall find that any of such provisions are being or have been violated by the owner or operator of any vehicle, such officer shall notify the owner or operator of such vehicle of the alleged violation by conspicuously attaching to such vehicle or delivering to the owner or operator a notice or ticket clearly stating the violation charged and requiring such owner or operator to respond to the charge(s) within five days after such violation.
(Code 1982, § 12-42; Ord. No. 98-007, § 1, 6-11-1998)

Sec. 34-36. Civil penalty for violation.

(a) Violations of the parking regulations contained in this chapter shall subject the offender to the civil penalties hereinafter enumerated. Pursuant to G.S. 160A-175, all criminal penalties for these violations as set out in G.S. 14-4 are hereby removed. The town in a civil action in the nature of debt may recover civil penalties.

(b) For violation of the following traffic regulations, except as otherwise provided by law, the penalties shall be as follows:

(1) Parking as to obstruct fire hydrants or fire lanes: $5.00.

(2) Parking or leaving standing any vehicle:

a. In a space designated in conformance with G.S. 20-37.6(d) for handicapped or visually impaired persons, when the vehicle does not display the distinguishing license plate or placard or disabled veteran license plate issued as required by state statute; or

b. So as to obstruct a curb ramp or curb cut for handicapped persons, as provided for by the state building code or as designated in G.S. 136-44.14.

c. Violation of either a. or b. above: $100.00.

(3) Parking or leaving standing an oversized vehicle: $10.00.

(4) All other parking violations: $5.00.
(Code 1982, § 12-43; Ord. No. 98-007, § 1, 6-11-1998; Ord. No. 00-007, § 1, 3-9-2000; Ord. No. 00-034, § I, 1-11-2001; Ord. No. 2010-Code-02, 3-10-2010)

Sec. 34-37. Penalties payable to school board.

The penalties permitted to be paid to and received by the parking violations bureau under this article shall be paid to the county school board for the use of the public schools.
(Code 1982, § 12-44; Ord. No. 98-007, § 1, 6-11-1998)

Sec. 34-38. Failure to answer charges; penalties.

(a) Any person who has failed to respond to the parking violation bureau within five days as specified in section 34-36(a) shall receive a written notice. Said notice shall state that if the civil penalty is not paid within 30 days a late penalty (in addition to the civil penalty) of $20.00 will be assessed.

(b) Failure to pay all penalties accessed within 60 days shall subject the offender to a civil action in the nature of debt for the assessed penalties plus an additional penalty of $50.00 together with the cost of the action to be taxed by the court.
(Code 1982, § 12-44; Ord. No. 98-007, § 1, 6-11-1998; Ord. No. 00-034, § I, 1-11-2001)

Sec. 34-39. Towing.

Nothing contained herein shall be construed to limit the authority of the town to move or tow vehicles that are parked in violation of any statute or ordinance.
(Code 1982, § 12-45; Ord. No. 98-007, § 1, 6-11-1998)

Secs. 34-40—34-66. Reserved.

ARTICLE III. TRAFFIC CONTROL DEVICES*

Sec. 34-67. Obedience by drivers.

(a) The driver of every vehicle shall obey the directions of any official traffic control device placed, erected or installed in accordance with the traffic ordinances of this town, unless otherwise directed by a police officer, or otherwise provided in this chapter.

(b) No provision of this chapter for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective without signs being placed to give notice thereof.
(Code 1976, § 16-17; Code 1982, § 12-42)

Sec. 34-68. Right turns on red.

The Director of Engineering is hereby authorized to determine intersections at which vehicular traffic facing a red light shall not make a right turn. The intersections subject to this prohibition shall be described in Traffic Schedule 3, Right Turns on Red.
(Code 1976, § 16-18; Code 1982, § 12-59; Ord. No. 77-35, § 2, 9-22-1977; Ord. No. 83-9, § 1, 5-12-1983; Ord. No. 86-42, § 1, 11-13-1986; Ord. No. 2009-Code-06, 5-14-09)

State law reference—Vehicle control signs and signals, G.S. 20-158.

***State law reference—**Traffic-control devices, G.S. 20-158, 20-172.

Sec. 34-69. Method of turning at intersections.

The Director of Engineering is authorized to modify the method of turning at intersections and determine those intersections at which drivers of vehicles shall not make a right, left or u-turn, by clearly indicating such modification or prohibition by markers, buttons or other direction signs. Said intersections shall be described in Traffic Schedule 4, Restricted Turns at Intersections. Whenever such markers, buttons, or signs are placed, erected or installed, no driver of a vehicle shall disobey the directions of any such marker, button or sign, and when authorized markers, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles traversing, or turning thereat, no driver of a vehicle shall disobey the directions of such indications. (Code 1976, § 16-20; Code 1982, § 12-61; Ord. No. 87-83, § 1, 9-10-1987; Ord. No. 90-61, 11-8-1990; Ord. No. 91-26, § 1, 6-13-1991; Ord. No. 93-07, § 1, 2-12-1993; Ord. No. 93-24, § 1, 4-8-1993; Ord. No. 93-39, § 1, 12-9-1993; Ord. No. 94-007, § 1, 4-14-1994; Ord. No. 94-008, § 1, 4-14-1994; Ord. No. 94-021, § 1, 8-11-1994; Ord. No. 2007-03, 2-22-2007; Ord. No. 2008-Code-07, 11-20-2008; Ord. No. 2009-Code-03, 2-12-2009; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-70. No-parking zone markers.

Whenever authorized signs or markings are placed, erected or installed indicating no-parking zones, no driver of a vehicle shall disobey the regulations in connection therewith.
(Code 1976, § 16-21; Code 1982, § 12-62)

Sec. 34-71. Avoiding signal at intersection.

No person shall drive a vehicle upon or across public or private through driveways, curb cuts or otherwise for the purpose of proceeding from any street to an intersecting street with the intent of avoiding traffic signs or signals erected or installed for vehicular traffic control.
(Code 1976, § 16-22; Code 1982, § 12-63)

Sec. 34-72. Quiet zone.

Whenever authorized signs are placed, erected or installed indicating a zone of quiet, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of said vehicle, except in an emergency.
(Code 1976, § 16-23; Code 1982, § 12-64)

Sec. 34-73. Recreational streets.

Whenever authorized signs are placed, erected or installed indicating any street or part thereof as a recreational street, no person shall drive a motor vehicle upon such street, or part thereof, during the times indicated. All such streets shall be properly designated by the town council.
(Code 1976, § 16-26; Code 1982, § 12-66; Ord. No. 77-15, § 1, 4-28-1977; Ord. No. 93-23, § 1, 4-8-1993)

Sec. 34-74. Temporary street closings and designation of parking or no-parking zones due to special events.

(a) *Specific authority.* The chief of police, or designee, is authorized to temporarily close to vehicular traffic the streets specified below and to temporarily designate "Parking" and "No Parking" zones on city streets for the following special events. The chief shall temporarily close a street by placing appropriate signs and banners in the roadway. The chief shall designate a "No Parking Zone" by marking the area with temporary signs indicating "No Parking—Tow Away Zone—Authority Cary Police Department." In the event the chief opens some "No Parking" zones to permit parking, all meters and "No Parking" signs shall be covered for that period of time that parking is allowed. Drivers of vehicles that use said streets while temporarily closed or persons who park in zones designated as "No Parking—Tow Away Zones" shall be in violation of this section. In addition to other penalties that may be imposed, the Cary police department, or its designee, is authorized to tow vehicles parked in "No Parking—Tow Away Zones.."

(1) Lazy Daze;

(2) Spring Daze;

(3) Cary Band Day;

(4) July 4th Celebration at Regency Park; and

(5) The SAS Championship Golf Tournament.

(b) *Lazy Daze.* As to Lazy Daze, this section shall apply from 12:00 noon on Friday through 9:00 p.m. on Saturday the scheduled weekend of the event or the rain date(s), if necessary, to include all of the area bounded by and including South Academy Street, East and West Chatham Street, South Harrison Avenue, Dry Avenue, and South Walker Street. For the time period indicated, the Chief may designate the following streets as "No Parking—Tow Away Zones." Lazy Daze is determined to be a specially designated town sponsored event to which the provisions of Chapter 24, section 24-18 and Chapter 6, section 6-72 apply, prohibiting animals, certain wheeled vehicles and other specified activities.

East side of South Harrison Avenue from West Chatham Street to Faculty Street;

North side of East Park Street from Walker Street to South Academy Street;

North side of West Park Street from South Harrison Avenue to South Academy Street;

Both sides of South Walker Street from its intersection with East Chatham Street to Walnut Street;

South side of Walnut Street from Kildaire Farm Road to South Walker Street.

(c) *Spring Daze.* As to Spring Daze, this section shall apply from 6:00 p.m. on Friday through 9:00 p.m. on Saturday the scheduled weekend of the event, or the rain date(s), if necessary, to include all of Bond Park, the streets and parking lots therein and all areas bounded by High House Road. For the time period indicated, the chief may designate the following streets as "No Parking—Tow Away Zones." Spring Daze is determined to be a specially designated town sponsored event to which the provisions of chapter 24, section 24-18 and chapter 6, section 6-72 apply, prohibiting animals, certain wheeled vehicles and other specified activities.

Bond Park Drive;

Metro Park Drive;

Maury O'Dell Place;

Charlie Henderson Way.

(d) *Cary Band Day.* As to Cary Band Day, this section shall apply from 6:00 a.m. through 11:59 p.m. on the scheduled day of the event, or the rain date, if necessary, to:

Walnut Street from S.E. Maynard Road to Cary Towne Boulevard. This section of Walnut Street is to be closed to allow a parking area for buses and an assembly area for bands; and

E. Chatham Street to S. Academy St. to Walnut St., ending at the Cary High School, to permit a parade. These roads will be closed for the parade, and opened promptly thereafter.

(e) *July 4th Celebration at Regency Park.* As to July 4th Celebration at Regency Park, this section shall apply from 12:01 a.m. through 11:30 p.m. on July 4, to provide certain "No Parking—Tow Away Zones." July 4th Celebration at Regency Park is determined to be a specially designated town sponsored event to which the provisions of chapter 24, section 24-18 and chapter 6, section 6-72 apply.

Both sides of Regency Parkway from the intersection of Tryon Road to the dead-end at 11000 Regency Parkway;

Both sides of Elerlee Drive from the intersection of Regency Parkway to Penny Road;

Both sides of Edinburgh Drive from U.S. 64 to the intersection of Glasgow Road;

Both sides of Queensferry Road from the intersection of Rutherglen Drive to the intersection of Edinburgh Drive.

(e) *SAS Championship Golf Tournament* As to the SAS Championship Golf Tournament, this section shall apply from 9:00 a.m. through 7:00 p.m. on the scheduled days of the event, or the rain date, if necessary, to establish "No Parking—Tow Away Zones" on:

Both sides of Summerlakes Drive from High House Road to Crabtree Crossing; and

On Crabtree Crossing from the Morrisville city limits to Cary Parkway; and

On Prestonwood Parkway from High House Road to the Preston Club House; and

On Bridlecreek Dr. from Prestonwood Dr. to Creek Park Drive.

(f) *Additional authority.* The chief of police, or designee, is authorized to temporarily close to vehicular traffic any street or streets within the town when the chief deems it necessary to meet the particular needs of a special event and to temporarily alter vehicular parking areas, by permitting parking on streets where parking is normally prohibited, or prohibiting parking on streets or in areas where parking is normally permitted. The authority granted herein is subject to the following:

(1) The special event must be sanctioned and properly permitted by the town;

(2) The area and boundaries of any street closing will consist of only those areas directly related to the special event and shall include any public street, sidewalk, or publicly owned area that is within or constitutes the boundary of that event;

(3) No street, or portion thereof, may be closed for more than 12 hours without the approval of town council;

(4) The fire chief shall be notified in advance of all street closings;

(5) Alteration of normal parking in areas affected by the special event will only be allowed for the 12 hours immediately prior to the event and during the event;

(6) The procedures for designating "closed" streets and "No Parking Zones" provided in subsection (a) shall apply, as shall the enforcement provisions.

(Code 1976, § 16-27; Code 1982, § 12-67; Ord. No. 01-003, 4-12-2001)

Sec. 34-75. Traffic control signal preemption.

(a) The fire chief, police chief and director of transportation and facilities are authorized to select such traffic signal controlled intersections they concurrently deem advisable for installation of emergency vehicle traffic signal preemption.

(b) If such traffic signals are located at the intersections of town streets, and funds are approved, installation shall proceed on the concurrently agreed upon direction(s).

(c) If such traffic signals are located at the intersection of one or more state highways, and funds are approved, the director of transportation and facilities shall submit the concurrent preemption installation request, and a copy of the ordinance from which this article is derived, to the department of transportation and facilities for its approval.

(d) If a traffic study of prospective commercial, residential, or industrial development determines that the developer shall be required to provide full or partial funding for traffic signals, and if traffic signal preemption is deemed advisable by subsection (a), such funding shall include the equipment and installation costs of the traffic signal preemption system approved by the town.
(Code 1982, § 12-68; Ord. No. 00-024, 9-14-2000; Ord. No. 2019-Code-04, 10-10-2019)

Secs. 34-76—34-93. Reserved.

ARTICLE IV. STOPPING, STANDING AND PARKING*

Sec. 34-94. Obstructing traffic generally.

No person shall stand a vehicle on any street as to interrupt, or interfere with, the passage of public conveyances or other vehicles.
(Code 1976, § 16-45; Code 1982, § 12-79)

Sec. 34-95. Warning devices on service vehicles.

No person shall permit or cause to permit any construction, service or maintenance vehicles to stand or be parked within the right-of-way of public roads and streets of the town in such a manner as to obstruct, impede or interfere with the normal traffic use on said streets: Provided, that such vehicles may be temporarily used outside of the rights-of-way or on a necessary portion thereof, facing in the same direction as the flow of traffic; provided further, that warning signs indicating "Men Working," together with red flags thereon, shall be placed not less than 200 feet in the front and rear of such vehicle or equipment. Such red flags shall be displayed on said signs from sunup to sundown, and after sundown red flares or lanterns shall be displayed adjacent to the warning signs. These warning signs and signals shall be displayed as long as such vehicle is being so used.
(Code 1976, § 16-46; Code 1982, § 12-81)

***State law references—**Stopping and parking, G.S. 20-161 et seq.; parking in municipalities, G.S. 160A-301.

Sec. 34-96. Parallel parking.

Where not otherwise indicated by this chapter, and where the street is not marked to show how vehicles shall park, all vehicles shall park parallel to the curb and not more than 12 inches therefrom.
(Code 1976, § 16-49; Code 1982, § 12-82)

Sec. 34-97. Reserved parking spaces.

Those streets or portions of streets where signs are placed, or marked off in any way to designate a specific purpose, shall be reserved and no automobile or other vehicle except those for which the space has been designated shall park therein.
(Code 1976, § 16-47; Code 1982, § 12-83)

Sec. 34-98. Vehicles backed up to curb.

No vehicle shall remain backed up to the curb, except when actually loading or unloading.
(Code 1976, § 16-50; Code 1982, § 12-84)

Sec. 34-99. Stopping with left side to curb.

No vehicle shall stop with its left side to the curb in the business district, except that on one-way streets vehicles shall stop headed in the direction of traffic.
(Code 1976, § 16-51; Code 1982, § 12-85)

Sec. 34-100. Parking within lines.

On any place which is marked off with lines indicating the parking spaces, cars shall be parked between said lines.
(Code 1976, § 16-52; Code 1982, § 12-86)

Sec. 34-101. Illegal parking.

No person shall stand or park a vehicle upon any street for the principal purposes of:

(1) Displaying it for sale.

(2) Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

(3) Storage thereof by garages, dealers or other persons when such storage is not incident to the bona fide use and operation of such automobile or other vehicles.

(4) Storage of any detached trailer or van when the towing unit has been disconnected, or for the purpose of transferring merchandise or freight from one vehicle to another.

(Code 1976, § 16-53; Code 1982, § 12-87)

Sec. 34-102. Advertising.

No person shall stand or park a vehicle on any street for the primary purpose of advertising.
(Code 1976, § 16-54; Code 1982, § 12-88)

Sec. 34-103. Stopping, standing or parking prohibited in certain places.

No person shall stop, stand or park a vehicle, attended or unattended, except when necessary to avoid conflict with other traffic, or in compliance with the directions of a police officer or traffic control device in any of the following places:

(1) On the sidewalk.

(2) Within an intersection or in front of a private driveway.

(3) On a crosswalk.

(4) Within 30 feet of any flashing beacon, stop sign or traffic control signal located at the side of a street or roadway.

(5) On either side of any street approaching a railroad underpass, or overhead bridge, within 50 feet in any direction of the outer edge of such underpass or overhead bridge.

(6) On either side of any street approaching a grade crossing within 50 feet of the closest rail; provided, that where existing permanent structures are located along the street and closer than 50 feet, parking may be permitted in front of such structures, unless otherwise prohibited if the said parking does not interfere with the view in either direction of an approaching locomotive or train.

(7) Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.

(8) Upon any bridge or other elevated structure.

(9) Within 15 feet in either direction of the entrance to a hotel, theater, hospital, sanitarium, or any public building.

(10) On the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street.

(11) Within 25 feet from the intersection of curblines or if none, then within 15 feet of the intersection of property lines at an intersection of highways or streets.

(12) Upon any area designated as a fire lane in any public vehicular area, street, highway or roadway or in any mail parking lot or shopping center, unless the parking is temporary for the purpose of loading or unloading supplies or merchandise and the vehicle is not left unattended.

(13) In any area other than those designated by lines indicating parking spaces in town-owned parking lots.

(14) Within 15 feet in either direction of a mailbox located adjacent to any street or highway, between the hours of 9:00 a.m. and 5:00 p.m., every day except Sundays and federal holidays.

(15) On any public street or highway which has been clearly marked with travel lanes, unless the travel lane is of sufficient width to allow another vehicle of any size to pass safely in the same travel lane without causing it to cross into another travel lane.

(16) In a space designated in conformance with G.S. 20-37.6(d) for handicapped or visually impaired persons, when the vehicle does not display the distinguishing license plate or placard as required by state statute.

(17) In a manner so as to obstruct a curb ramp or curb cut for handicapped persons, as provided for by the state building code or as designated in G.S. 136-14.14.

(18) In any area upon a public street which has been clearly marked as a bicycle travel lane, except for Bridle Creek Drive and Upchurch Meadow between the hours of 7 p.m. and 7 a.m.

(Code 1976, § 16-55; Code 1982, § 12-89; Ord. No. 87-21, § 2, 6-11-1987; Ord. No. 89-37, § 1, 6-8-1989; Ord. No. 91-41, § 1, 10-10-1991; Ord. No. 93-38, § 1, 12-9-1993; Ord. No. 95-004, § 1, 1-12-1995; Ord. No. 01-017, § 1, 9-13-2001; Ord. No. 03-005, § 1, 5-8-2003)

State law reference—Similar provisions, G.S. 20-162.

Sec. 34-104. Fifteen-minute parking zones designated.

(a) The streets or portion of streets described in Traffic Schedule 5, Fifteen-Minute Parking Zones, are hereby designated as fifteen-minute parking zones.

(b) No person shall park or leave unattended any vehicle, nor stop any vehicle which he is operating, in any fifteen-minute parking zone for a period longer than 15 minutes. The changing of the position of a vehicle from one point to another point within the same block shall be deemed as one continuous parking period.

(c) Any street or portion of a street designated as a fifteen-minute parking zone shall be plainly marked with a sign or signs to indicate that no vehicle may be parked within such area or along said street or portion of a street designated by said sign or signs for a period longer than 15 minutes at any time, unless otherwise provided.

(Code 1976, § 16-65; Code 1982, § 12-90; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-105. One-hour parking zones generally.

(a) The streets or portions of streets described in Traffic Schedule 6, One-Hour Parking Zones, are hereby designated as one-hour parking zones.

(b) Parking in a one-hour parking zone shall be limited to one hour between the hours of 8:00 a.m. and 6:00 p.m. on any day except Sundays and public holidays. The changing of the position of a vehicle from one point directly to another point within the same block shall be deemed as one continuous parking period.

(c) No person shall park or leave unattended any vehicle, or stop any vehicle which he is operating, for a period longer than one hour in a one-hour parking zone during the times limited. Unless specifically limited herein, the one-hour parking limitation applies at all times.

(d) Each street or portion of a street designated as a one-hour parking zone shall be plainly marked by a sign or signs to indicate that no motor vehicle may be parked for a period of longer than one hour within the area designated during the times indicated by such sign or signs.

(Code 1976, § 16-67; Code 1982, § 12-92; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-106. Two-hour parking zone.

(a) The streets or portions of streets described in Traffic Schedule 7, Two-Hour Parking Zones, are hereby designated as two-hour parking zones.

(b) When signs are placed, erected or installed in any place, giving notice thereof, no person shall park a vehicle for longer than two hours at any time between the hours of 8:00 a.m. and 6:00 p.m. on any day, except Sundays and public holidays, upon any such place. The changing of the position of a vehicle from one point directly to another point, within the same block, shall be deemed one continuous parking period.
(Code 1976, § 16-68; Code 1982, § 12-93; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-107. Parking prohibited in designated places—At all times.

When signs are placed, erected or installed, giving notice thereof, or the curbing has been painted yellow in lieu of such signs, no person shall park a vehicle at any time upon any of the streets or portions of streets described in Traffic Schedule 8, Prohibited Parking.
(Code 1976, § 16-69; Code 1982, § 12-94; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-108. Same—During certain hours.

When signs are placed, erected or installed in any place giving notice thereof, no person shall park a vehicle between the hours of 1:00 a.m. and 6:00 a.m., unless other hours are designated, upon any of the places described in Traffic Schedule 9, Prohibited Parking - Certain Hours. Provided, that this section shall not apply to automobiles or other vehicles parked on said places between the hours of 1:00 a.m. and 6:00 a.m., when the owners thereof are at work in the building, on the premises, in front of or near said automobiles or other vehicles which are parked.
(Code 1976, § 16-70; Code 1982, § 12-95; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-109. Lights on parked vehicles.

The displaying of lights upon a vehicle, when lawfully parked at night upon a street in accordance with this chapter, shall not be required when there is sufficient light to reveal any person within a distance of 200 feet upon such street.
(Code 1976, § 16-38; Code 1982, § 12-96)

State law reference—Authority for above section, G.S. 20-134.

Sec. 34-110. Stop before entering certain street intersections.

Those intersections where stop signs are erected are hereby declared to be stop intersections when entered from the streets first named, and when stop signs are placed, erected or installed at such intersections every driver of a vehicle shall stop in obedience to such signs before entering the intersection, and shall not proceed into or across the through street until he has first determined that no conflict with traffic will be involved.
(Code 1976, § 16-29; Code 1982, § 12-97; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-111. Stop streets designated.

(a) The Director of Engineering is authorized to determine which streets are stop streets. Said streets shall be described in Traffic Schedule 10, Stop Streets.

(b) As used herein, "stop street" shall mean any street so designated at its intersection with the streets hereinafter designated.

(c) Any person operating any vehicle, before proceeding along or from any stop street into the intersection of the stop street with the intersecting streets, shall stop. Traffic over the intersecting street and through such intersection with said stop street shall have the right-of-way.
(Code 1976, § 16-71; Code 1982, § 12-98; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-112. Parking of oversized vehicles and trailers prohibited.

(a) It shall be unlawful for any person to park any vehicle or trailer of 80 inches or more in width or 30 feet or more in length on the streets within the corporate limits of the town at any time except for the duration of the following activities:

(1) When actively engaged in loading or unloading;

(2) Temporary parking for emergency services to a vehicle or trailer to repair a mechanical breakdown;

(3) Temporary parking at a construction site during the period of active construction.

Provided, that this section shall not apply to any mass transit buses or to school buses, when the school buses are parked in conformity with permits issued by the police department.

(b) Any violator who has received a notice of violation under this section may answer such charge before the traffic violation bureau by voluntarily paying a civil penalty of $10.00.
(Code 1982, § 12-100; Ord. No. 84-2, § 1, 3-8-1984)

Sec. 34-113. Parks and recreation facilities; unauthorized parking.

It shall be unlawful for any vehicle to park on any roadway or in any designated parking space within a town park or recreation facility except for specific use of the park or facility. Parking at all town parks and recreation facilities shall be for parks and recreation patrons only. Violation of this section shall be a misdemeanor and vehicles in violation will be issued a citation and/or may be towed at vehicle owner's expense.
(Code 1982, § 12-101; Ord. No. 89-70, § 1, 9-14-1989)

Sec. 34-114. Town facilities; unauthorized parking.

It shall be unlawful for any vehicle to park on any roadway or designated parking space of a town government facility except for the purpose of visiting and/or conducting business at the facility during the hours of 8:00 a.m. through 5:00 p.m. Monday through Friday. Violation of this section shall be a misdemeanor and vehicles in violation will be issued a citation and/or may be towed at vehicle owner's expense.
(Code 1982, § 12-103; Ord. No. 89-70, § 2, 9-14-1989)

Secs. 34-115—34-141. Reserved.

ARTICLE V. OPERATION OF VEHICLES GENERALLY*

Sec. 34-142. Vehicles emerging from alley or driveway.

The driver of a vehicle emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk areas extending across any alleyway.
(Code 1976, § 16-35; Code 1982, § 12-111)

State law reference—Yielding on entering roads from driveways, buildings, etc., G.S. 20-156.

Sec. 34-143. Vehicles moving from parked positions.

Vehicles moving from parked positions shall move out in the direction headed, or if they are parked at any angle with the curb they shall back out on that angle until they have cleared the other vehicles and shall then proceed in the direction they are most nearly headed.
(Code 1976, § 16-39; Code 1982, § 12-112)

Sec. 34-144. Turning around.

No driver shall turn any vehicle so as to proceed in the opposite direction in the business district.
(Code 1976, § 16-33; Code 1982, § 12-114)

Sec. 34-145. Backing.

No driver shall back a vehicle into any intersection, or over a crosswalk, and shall not in any event, or at any place, back a vehicle unless such movement can be made in safety and he shall have given ample warning to those who may be behind by hand and horn or other signal.
(Code 1976, § 16-34; Code 1982, § 12-115)

Sec. 34-146. Yield right-of-way signs.

(a) The Director of Engineering is authorized to designate main-traveled or through streets by erecting at the entrance thereto from intersecting streets signs notifying drivers of vehicles to yield the right-of-way to drivers of vehicles approaching the intersection on the main-traveled or through street. The streets on which the traffic shall yield the right-of-way shall be described in Traffic Schedule 11, Yield Signs. Whenever such yield right-of-way signs have been so erected, the driver of any vehicle entering the main-traveled or through street shall yield the right-of-way to any vehicle in movement on the main-traveled or through street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main-traveled or through street.
(Code 1976, § 16-72; Code 1982, § 12-117; Ord. No. 2009-Code-06, 5-14-09)

State law reference—Yield right-of-way signs, G.S. 20-158.1

***State law reference—**Operation of vehicles and rules of the road, G.S. 20-138.1 et seq.

Sec. 34-147. Turning at channelized intersections.

The Director of Engineering is authorized to mark town-maintained intersections for channelization. The Director of Engineering is authorized to mark such state roadways as approved by the North Carolina Department of Transportation. Intersections so marked shall be described in Traffic Schedule 12, Channelized Intersections. Markings on any roadway may be altered or eliminated per authorized procedure as safety and construction concerns may dictate.
(Code 1976, § 16-32; Code 1982, § 12-118; Ord. No. 88-10, § 1, 7-14-1988; Ord. No. 2009-Code-06, 5-14-09)

State law reference—Turning at intersections, G.S. 20-153.

Sec. 34-148. Commercial vehicles on certain streets.

No person shall operate any commercial vehicle exceeding one-half ton capacity at any time upon any of the streets or parts of streets described in Traffic Schedule 13, Commercial Vehicles Prohibited, except that such vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding thereon no farther than the nearest intersection thereafter.
(Code 1976, § 16-37; Code 1982, § 12-119; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-149. Speed limit on through highways and state maintained streets.

(a) A person may operate a vehicle on any street of the town designated as a through highway or state maintained street, at a rate of speed posted thereon as provided by ordinances of the town with concurring regulations of the state department of transportation, where applicable; provided, that at no time shall the speed be greater than is reasonable and prudent under the conditions then existing or to conform with the state speed laws.

(b) No person shall operate a vehicle at a greater rate of speed than that specified on those portions of through highways and state maintained streets described in Traffic Schedule 14, Speed Limits.
(Code 1976, § 16-40; Code 1982, § 12-120; Ord. No. 2009-Code-06, 5-14-09)

State law reference—Speed restrictions, G.S. 20-141.

Sec. 34-150. Speed limit on nonhighway streets.

No person shall operate a vehicle on a nonhighway system street in a residential district in excess of 25 miles per hour.
(Code 1976, § 16-41; Code 1982, § 12-121; Ord. No. 90-56, § 1, 11-8-1990; Ord. No. 2009-Code-06, 5-14-09)

Sec. 34-151. Speed limits in school zones.

Speed limits for school zones are established in Traffic Schedule 15, Speed Limits in School Zones. The times for each school speed zone will be in effect, at a minimum, from 30 minutes before to 30 minutes after school begins and ends on school days only.

School speed zones will be designated by signs giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by signs giving notice of the school zone, the authorized speed limit and which indicate the days and hours the lower limit is

effective by an electronic flasher operated with a time clock. The speed limit in a school zone shall be typically no more than 10 miles per hour less than the normally posted speed limit for that segment of roadway, but not less than a speed limit of 25 miles per hour.
(Code 1982, § 12-123; Ord. No. 90-59, § 1, 11-8-1990; Ord. No. 96-014, 11-14-1996; Ord. No. 2007-09, 7-26-2007; Ord. No. 2009-Code-06, 5-14-2009; Ord. No. 2009-Code-09, 8-13-2009; Ord. No. 2011-Code-05, 6-30-2011)

State law reference—Speed limits in school zones, G.S. 20-141.1.

Sec. 34-152. Limitations on privilege of overtaking and passing—Generally.

(a) The driver of a vehicle shall not drive to the left side of the center line of a street or highway upon the crest of a grade or upon a curve in the street or highway where such center line has been placed by the town and is visible.

(b) The driver of a vehicle shall not overtake and pass another on any portion of the street or highway which is marked by signs, markers or markings placed by the town stating or clearly indicating that passing should not be attempted.
(Code 1982, § 12-124; Ord. No. 93-27, § 1, 4-8-1993)

Sec. 34-153. Same—On specified streets.

The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction of travel on any portion of West Chatham Street from its intersection with Old Apex Road to its intersection with Cary Parkway, except for the following conditions:

(1) The driver of a vehicle may overtake and pass another vehicle proceeding in the same direction when the roadway has been marked for two or more lanes of moving vehicles which are not occupied by parked vehicles; and

(2) The driver of a vehicle may overtake and pass upon the right of another vehicle when the vehicle overtaken is in a lane designated for left turns.
(Code 1982, § 12-125; Ord. No. 93-28, § 1, 4-8-1993)

Secs. 34-154—34-174. Reserved.

ARTICLE VI. MOVEMENT OF HEAVY VEHICLES OR ARTICLES*

Sec. 34-175. Special permits

The town manager or designee shall have full authority to issue permits pursuant to G.S. 20-119, and no permit shall be issued by him unless, in his judgment, it is deemed advisable and not likely that damage to public or private property will occur therefrom.
(Code 1976, § 14-44; Code 1982, § 12-139)

***State law reference—**Size, weight, construction and equipment of vehicles, G.S. 20-115 et seq.

Sec. 34-176. Change of route.

If some unforeseen difficulty should prevent the following of the exact route described in the permit for the removal of any particular machine or piece of machinery, application shall be made to the town manager before entering upon any part of the new route and the permit corrected to show the description of such route.
(Code 1976, § 14-45; Code 1982, § 12-140)

Secs. 34-177—34-205. Reserved.

ARTICLE VII. IMPOUNDMENT*

Sec. 34-206. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned motor vehicle shall mean a motor vehicle which:

(1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on property owned or operated by the town for longer than 24 hours without the consent of the town; or

(3) Is left on private property without the consent of the owner or occupant or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days without valid registration or license plate.

Aesthetic nuisance vehicle shall mean a junked motor vehicle on public or private property that has been determined by authorized officials of the planning department to be so offensive to the sight as to damage the community, neighborhood or area appearance. In making the determination, the authorizing official must find that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such findings shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. Factors that may be considered are protection of property values, promotion of tourism, indirect protection of health and safety, preservation of the character and integrity of the community, or promotion of the comfort, happiness and emotional stability of area residents; provided that this paragraph shall not apply to any motor vehicle that is used on a regular basis for business or personal use, nor shall it apply to the removal or disposal of a motor vehicle kept or stored at a bona fide "auto graveyard" or "junkyard" as defined in G.S. 136-143.

***State law reference—**Removal and disposal of junked and abandoned motor vehicles, G.S. 160A-303.

Junked motor vehicle shall mean a motor vehicle that does not display a current license plate lawfully upon that vehicle and:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than $100.00.

Motor vehicle or vehicle shall mean and include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

Nuisance vehicle shall mean a motor vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance or unlawful, including a vehicle found to be:

(1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests; or

(2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or

(3) A point of collection of pools or ponds of water; or

(4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or

(5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.; or

(6) So situated or located that there is a danger of it falling or turning over; or

(7) Used by children in play activities; or

(8) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or

(9) One which has sharp parts which are jagged or contain sharp edges of metal or glass; or

(10) Any other vehicle specifically declared a health and safety hazard or a public nuisance by the town council.

Tow in any of its forms shall mean removing a vehicle by any means; including towing and storing the vehicle.

(Code 1982, § 12-157; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990; Ord. No. 02-019, 8-8-2002)

Sec. 34-207. Abandoned, nuisance and aesthetic nuisance vehicles unlawful; towing authorized; responsibility for costs.

(a) *Abandoned, nuisance and aesthetic nuisance vehicles unlawful.*

(1) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle to abandon the motor vehicle on public property within the town's municipal boundaries for such time and under such circumstances as to cause such vehicle to appear to have been abandoned.

(2) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle or for the owner, lessee or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.

(3) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle or for the owner, lessee or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared an aesthetic nuisance vehicle.

(b) *Towing authorized.* Upon investigation, the proper officials of the town may determine and declare that a motor vehicle is abandoned, a nuisance vehicle or aesthetic nuisance vehicle and order the vehicle removed from the property.

(c) *Owner responsible for removal costs.* If an abandoned vehicle is removed by or at the direction of the town, the owner shall pay all reasonable costs incidental to the removal and storage of such vehicle and incidental to locating the owner thereof. If an abandoned vehicle is towed from private property, it shall be at the direction of the property owner. Town officials will assume no responsibility for the removal of abandoned vehicles from private property.

(d) *Town responsible for removal costs.* If a vehicle is declared to be a nuisance or an aesthetic nuisance, the vehicle/property owner may have the option to have the vehicle removed from their property at no expense. In order to have the vehicle removed at no expense to the owner, a signed consent form and vehicle title of ownership must be given to the town and the towing company. If the above stated requirements are not provided to the town, civil penalties shall be issued for a maximum of 10 days for each day the vehicle remains in violation. If the vehicle remains on the property in excess of 10 days, the violation and civil penalties may be handled as a civil action in small claims court. A request will be made to collect civil penalties and to order the vehicle removed from the property.
(Code 1982, § 12-158; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990; Ord. No. 02-019, 8-8-2002; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 34-208. Administration.

(a) The town may, on an annual basis, contract with private tow truck operators or towing businesses to tow, store and dispose of vehicles.

(b) Duly authorized officials of the town shall have the right, upon presentation of proper credentials and identification, to enter any premises within the jurisdiction of this article during daylight hours to determine if any vehicle qualifies as a nuisance or aesthetic nuisance as defined in article VII.
(Code 1982, § 12-159; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990; Ord. No. 02-019, 8-8-2002; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 34-209. Removal of abandoned, nuisance and aesthetic nuisance vehicles; pre-towing requirements.

(a) *Pre-towing notice not required.* Except as set forth in subsection (d), an abandoned motor vehicle may be towed by or at the direction of the town without pre-towing notice if the abandoned motor vehicle has valid registration plate and registration or if the last registered owner is known to the town, provided post-towing notice is thereafter given as set forth in section 34-210.

(b) *Pre-towing notice required.* Except as set forth in subsection (d), an abandoned motor vehicle without valid registration plate or registration, or for which the town does not know the last registered owner, nuisance and aesthetic nuisance vehicles may be towed only after notice to the owner or person entitled to possession of the vehicle. Notice shall be given by affixing notice on the windshield or some other conspicuous place on the vehicle. The notice shall state that civil penalties will begin in seven days after the notice is received unless the vehicle is moved by the owner or legal possessor prior to that time. Additionally, in the case of a nuisance, and aesthetic nuisance motor vehicle, if the names and mailing addresses of the owners of the vehicles or the real property upon which it is located can be ascertained in the exercise of reasonable diligence, the notice shall also be given to both by first-class mail. The person who mails notices shall retain a written record to show the names and addresses to which mailed, and the date mailed.

(c) *Pre-towing appeal.* If the owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is a nuisance or aesthetic nuisance vehicle, such appeal shall be made within seven days of the date of the pre-towing notice to the planning director in writing, reviewed within seven days, and further proceedings to remove the vehicle and to impose the civil penalty provided in section 34-215 shall be stayed until the appeal is decided.

(d) *Pre-towing notice exception for certain abandoned and nuisance vehicles.* If an authorizing official finds that an abandoned motor vehicle on public streets impedes the flow of traffic or otherwise jeopardizes the public welfare so that immediate removal is necessary, that vehicle may be removed without any pre-towing notice. Such findings shall be entered by the authorizing official in appropriate daily records. Circumstances justifying the immediate removal of motor vehicles include vehicles obstructing traffic; parked in violation of an ordinance prohibiting or restricting parking; parked in a no stopping or standing zone; parked in loading zones; parked in bus zones; or parked in violation of temporary parking restrictions imposed by the town. Abandoned vehicles and nuisance vehicles on other public or town property may be removed without pre-towing notice only in those circumstances where the authorizing official finds, and enters such findings in appropriate records, a special need for prompt action to maintain the public health, safety and

welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.
(Code 1982, § 12-160; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990; Ord. No. 02-019, 8-8-2002)

Sec. 34-210. Removal of vehicle; post-towing notice requirements.

(a) *Content of post-towing notice.* Any abandoned motor vehicle or any vehicle which has been determined to be a nuisance or aesthetic nuisance vehicle may be removed to a storage garage or area by a towing business contracting to perform such services for the town. The town shall, immediately after removing any abandoned or nuisance vehicle, notify the last known registered owner of the vehicle, such notice to include the following:

(1) A description of the removed vehicle;

(2) The location where the vehicle is stored;

(3) The violation with which the owner is charged, if any;

(4) The procedure the owner must follow to redeem the vehicle; and

(5) The procedure the owner must follow to request a probable cause hearing on the removal of the vehicle as described in section 34-211.

(b) *Notice to be mailed.* This notice shall be mailed to the owner's last known address, unless waived in writing. Additionally, the town shall attempt to give notice to the registered owner by telephone.

(c) *Notice for registered vehicles.* If the vehicle is registered in North Carolina, notice shall be mailed within 24 hours. If the vehicle is not registered in the state of North Carolina, notice shall be mailed to the owner within 72 hours from the removal of the vehicle.

(d) *Notice for unregistered abandoned, nuisance and aesthetic nuisance vehicles.* Whenever an abandoned motor vehicle, a nuisance vehicle or an aesthetic nuisance vehicle is removed and such vehicle has no valid registration or registration plate, the authorizing town official shall make reasonable efforts, including the checking of the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information as set forth in subsection (a), items (1) through (5) above.

(e) *Compliance with general statutes.* All post-towing notices shall comply with the provisions of G.S. 20-219.11.
(Code 1982, § 12-161; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990)

Sec. 34-211. Right to probable cause hearing before sale or final disposition of vehicle; right to recover vehicle; unauthorized removal unlawful.

(a) *Probable cause hearing.* After towing of an abandoned, nuisance or aesthetic nuisance vehicle, the owner or other person entitled to possession may request in writing a hearing to determine if probable cause existed for removing the vehicle. The request must be filed with the

magistrate in the county where the vehicle was towed. The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. 20-219.11.

(b) *Recovery of vehicle.* At any time after towing of an abandoned, nuisance or aesthetic nuisance motor vehicle, the owner may obtain possession of the motor vehicle by paying the fee for towing and storage or by posting bond in accordance with G.S. 20-219.12.

(c) *Unauthorized removal.* It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the town any vehicle which has been impounded pursuant to the provisions of this article, unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.
(Code 1982, § 12-162; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990)

Sec. 34-212. Sale and disposition of vehicle.

(a) *Consent of owner.* With the consent of the registered owner, the town or tow truck operator may dispose of any vehicle without holding it for any prescribed period of time.

(b) *Sale of vehicle.* An abandoned, nuisance or aesthetic nuisance motor vehicle shall be held for a period of at least 30 days, during which time the owner may claim it by exhibiting proof of ownership to the town or towing business that removes the vehicle and by paying the costs incidental to its towing and storage. A motor vehicle may, after being held for 30 days, be sold in accordance with the provisions of G.S. 44A-4, G.S. 44A-5, and G.S. 44A-6, provided that, if the town is responsible for collecting towing or removal fees, no hearing in addition to the probable cause hearing described in section 34-211 shall be required. If no one purchases the vehicle at the sale, and if the value of the vehicle is less than the amount of the lien, the town may destroy the vehicle.

(c) *Post-sale notice to the department of motor vehicles.* Within 15 days after final disposition of a junked motor vehicle, written notice thereof shall be given to the department of motor vehicles that the vehicle has been determined to be a junked motor vehicle and disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined.
(Code 1982, § 12-163; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990)

Sec. 34-213. Disposition of proceeds of sale.

The proceeds of the sale of an abandoned, nuisance or aesthetic nuisance motor vehicle shall be applied as set forth in G.S. 44A-5 as follows:

(1) Payment of reasonable expenses incurred in connection with the sale, including but not limited to, reasonable storage expenses after giving notice of sale;

(2) Payment of towing costs and costs incurred in connection with learning the identity of the vehicle's owner or the owner of the real estate on which a nuisance vehicle is located; and

(3) Any surplus shall be paid to the person entitled thereto, but when such person cannot be found, this surplus shall be paid to the Clerk of Superior Court of Wake County to be held by the clerk for the person entitled thereto.

(Code 1982, § 12-164; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990)

Sec. 34-214. Exceptions.

Nothing in this article shall apply to any motor vehicle in an enclosed building; on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of such business enterprise; located in a bona fide "auto graveyard" or "junkyard" as defined in G.S. 136-143 in accordance with "Junkyard Control Act" (G.S. 136-141 et seq.; or in an appropriate storage place or depository maintained in a lawful place and manner by the town.

(Code 1982, § 12-166; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990)

State law reference—Similar provisions, G.S. 160A-303(g).

Sec. 34-215. Civil penalty.

(a) *Civil penalty.* Any violation of section 34-207(a)(2) and (3) of this article shall subject the offender to a civil penalty in the amount of $50.00. No penalty shall be imposed if the offender removes the motor vehicle from the property within seven days of the date the pre-towing notice has been given by the town pursuant to section 34-209. If the offender does not remove the motor vehicle from the property within seven days of the pre-towing notice, the penalty may be imposed for each day the vehicle was permitted to remain on the property, commencing with the date the pre-towing notice was received and terminating on the date of removal of the motor vehicle (no more than 10 days), each day's violation constituting a separate offense. Violation of section 34-207(a)(2) and (3) shall not be prosecuted as a misdemeanor.

(b) *Recovery of penalty.* The penalty may be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been issued a citation.

(c) *Citation.* The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

(Code 1982, § 12-167; Ord. No. 90-28, § 1, 4-12-1990)

Sec. 34-216. Article cumulative.

Procedures set forth in this article shall be in addition to any other remedies that may exist under law or ordinance to the abatement of public nuisances.

(Code 1982, § 12-168; Ord. No. 89-66, § 1, 9-14-1989; Ord. No. 90-28, § 1, 4-12-1990)

Secs. 34-217—34-240. Reserved.

ARTICLE VIII. BICYCLES AND MOTORCYCLES

Sec. 34-241. Application of traffic laws to bicycles.

Every person riding a bicycle upon a roadway shall be granted all the rights and shall be subject to all the duties applicable to the driver of a vehicle and the traffic provisions of this Code applicable to the driver of a vehicle, except as to those provisions of ordinances which by their nature are inapplicable.
(Code 1976, § 16-95; Code 1982, § 12-176)

Sec. 34-242. Obedience to traffic control devices.

(a) Any person operating a bicycle shall obey the instructions of official traffic control signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.

(b) Whenever authorized signs are erected indicating that a turning movement is restricted, no person operating a bicycle shall disobey the direction of any such sign, except where that person dismounts from the bicycle to make the turn, in which event such person shall then obey the regulations applicable to pedestrians.
(Code 1976, § 16-96; Code 1982, § 12-177)

Sec. 34-243. Manner of riding bicycle.

(a) A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
(Code 1976, § 16-97; Code 1982, § 12-178)

Sec. 34-244. Riding abreast on roadways.

Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles or unless participating in a town sponsored or sanctioned biking event.
(Code 1976, § 16-98; Code 1982, § 12-179; Ord. No. 00-001, § 1, 3-8-2001)

Sec. 34-245. Emerging from alley or driveway.

The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on the sidewalk or sidewalk area. Upon entering the roadway the operator shall yield the right-of-way to all vehicles approaching on the roadway.
(Code 1976, § 16-100; Code 1982, § 12-180)

Sec. 34-246. Speed.

No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions existing.
(Code 1976, § 16-99; Code 1982, § 12-181)

Sec. 34-247. Clinging to moving vehicles.

No person riding upon any bicycle, motorcycle, coaster, sled, rollerskates or any toy vehicle shall attach the same or himself to any public conveyance or moving vehicle upon any roadway.
(Code 1976, § 16-101; Code 1982, § 12-182)

Sec. 34-248. Riding on handlebars, etc.

The operator of a motorcycle or bicycle, when upon a street, shall not carry any person upon the handlebars, frame or tank of any such vehicle, nor shall any person so ride upon any such vehicle.
(Code 1976, § 16-102; Code 1982, § 12-183)

Sec. 34-249. Hands on handlebars; carrying articles.

(a) No person shall ride a bicycle or motorcycle on any street without having at least one hand upon the handlebars.

(b) No person operating a bicycle shall carry any package, bundle or article which prevents him from keeping at least one hand upon the handlebars.
(Code 1976, § 16-103; Code 1982, § 12-184)

Sec. 34-250. Riding on sidewalk.

No person shall ride a bicycle on any sidewalk within the town without due caution and shall yield the right-of-way to all pedestrians using said sidewalks.
(Code 1976, § 16-104; Code 1982, § 12-185; Ord. No. 99-008, § 1, 6-10-1999)

Sec. 34-251. Equipment on bicycles.

(a) A bicycle shall not be equipped with, nor shall any person use, any siren or whistle upon a bicycle.

(b) Bicycles shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement.
(Code 1976, § 16-105; Code 1982, § 12-186)

State law reference—Lighting equipment, G.S. 20-129.

Sec. 34-252. Parking.

No bicycle shall be parked or left standing on any street or sidewalk so as to unnecessarily obstruct the normal flow of vehicular or pedestrian traffic or as to otherwise create any undue safety hazard.
(Code 1976, § 16-106; Code 1982, § 12-187; Ord. No. 01-001, § 1, 3-8-2001)

Sec. 34-253. Motorcycles and off-highway motor vehicles generally.

(a) *Purpose.* The purpose of this section is to exercise the general police power in order to protect the enjoyment and use of public and private property, to protect the rights of privacy, to preserve property and personal values and to promote peace and quiet within this town by regulating the use of motorcycles, motor-driven cycles or off-highway motor vehicles on public and private property. This section shall not apply to the driving, riding and use of motorcycles, motor-driven cycles or off-highway motor vehicles on streets and highways or in other areas which are specifically governed or preempted by the General Statutes of North Carolina.

(b) *Use.* It shall be unlawful for any person to drive, ride, or use a motorcycle, motor-driven cycle, or off-highway motor vehicle, including but not limited to motor scooters, motorbikes and minibikes, upon any public or private property which is not a public street or highway, including those properties designated as greenway or bicycle path except that this subsection shall not apply in any of the following instances:

(1) Where such vehicle is being driven, ridden or used upon property by the owner, resident or occupant of such property, or by an authorized visitor when such visitor is accompanied by or has a written authorization in his possession from the owner, resident or occupant of such property.

(2) Where such use is permitted in accordance with the zoning ordinance of the town.

(c) *Mufflers.* It shall be unlawful for any person drive, ride or use a motorcycle, motor-driven cycle or off-highway motor vehicle, including but not limited to motor scooters, motorbikes and minibikes, upon any public or private property which is not a public street or highway, unless said motorcycle, motor-driven cycle, or off-highway motor vehicle is at all times equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens, and it shall be unlawful to use a muffler cutout.
(Code 1982, § 12-188; Ord. No. 78-9, § 1, 4-27-1978; Ord. No. 87-103, § 3, 12-10-1987)

State law reference—General ordinance-making power, G.S. 160A-174.

Sec. 34-254. Exemption for police bicycle patrols.

Any police officer riding or operating a bicycle in the performance of duty is exempted from all provisions of the Town Code, so long as the actions of the officer(s) are deemed reasonable and with due regard for the public's safety. Furthermore, this exemption shall be deemed applicable to any and all provisions of the Code where the regulation of bicycles is addressed.
(Code 1982, § 12-189; Ord. No. 94-030, 10-13-1994)

Sec. 34-255. Bicycle helmets required.

(a) Every person 15 years of age or under operating a bicycle, inline skates, roller skates, skateboard, scooter, or other similar vehicle or device on a public street, sidewalk, greenway, or other right-of-way or on any property owned or controlled by the town shall wear a protective helmet

on his or her head, with the chin strap securely fastened under the chin. Such helmet shall be fitted to the size of the operator and shall meet or exceed the standards for bicycle helmet use and wear as set by ANSI (American National Standards Institute) or the Snell Memorial Foundation.

(b) No passenger 15 years of age or under may ride on a bicycle on any of the locations enumerated in subsection (a) without wearing a helmet as described in subsection (a).

(c) No parent or guardian of any juvenile operating, or a passenger of, any vehicle or device described in subsections (a) and (b) above shall knowingly allow a violation of this section.
(Code 1982, § 12-190; Ord. No. 99-009, § 1, 6-10-1999; Ord. No. 01-004, § 1, 4-12-2001)
State law reference(s) Bicycle helmets, G.S. 20-171.9.

Sec. 34-256. Penalty.

In those sections requiring compliance by juveniles 15 years of age or under, the parents or guardians shall be deemed responsible for insuring such compliance.
(Code 1982, § 12-198; Ord. No. 99-010, § 1, 6-10-1999)

Secs. 34-257—34-275. Reserved.

ARTICLE IX. OPERATION OF GOLF CARTS ON PUBLIC STREETS AND ROADS

Sec. 34-276. Authority to regulate.

Pursuant to G.S. 160A-300.6, the town is authorized, by ordinance, to require the registration of, and regulate the operation of electric powered golf carts upon any public street or road within the town.
(Code 1982, § 12-230; Ord. No. 02-008, § 1, 3-14-2002; Ord. No. 2010-Code-05, 7-15-2010)

Sec. 34-277. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Golf cart means a golf cart as defined by G.S. 20-4.01(12a).

Operate means to drive, or be in physical control of a golf cart that is moving or has its engine on.

Public streets and roads are those roads defined in section 34-279 and 34-280 below.
(Code 1982, § 12-231; Ord. No. 02-008, § 1, 3-14-2002; Ord. No. 2010-Code-05, 7-15-2010)

Sec. 34-278. Operation on public streets and roads.

It is unlawful to operate a golf cart on a public street or road within the town unless the following requirements are met.

(1) The golf cart may only be operated on streets and roads that meet the requirements of section 34-279 or section 34-280 below.

(2) No person may operate a golf cart unless that person is licensed to drive upon the streets and highways of North Carolina and then, only in accordance with such driver's license. An operator of golf cart must be at least 16 years of age.

(3) Only the number of people the golf cart is designed to seat may ride on a golf cart, specifically, passengers shall not be carried on the part of a golf cart designed to carry golf bags.

(4) No golf cart may be operated at a speed greater than reasonable and prudent for the existing conditions, and in no instance at a speed greater than 20 miles per hour.

(5) No golf cart may be operated in a careless or reckless manner.

(6) Golf carts must be operated to the extreme right of the roadway and must yield to all vehicular and pedestrian traffic.

(7) Golf carts may be operated in bicycle lanes on the streets and roads permitted by section 34-279 and section 34-280 below provided they do not impede bicycle traffic.

(8) Golf carts may be operated only during daylight hours, with the exception that golf carts equipped with operating lights and reflectors meeting the requirements set forth below may operate only between the hours of 7:00 a.m. to 10:00 p.m.:

a. Two lighted lamps, one on each side of the front of the golf cart, visible under normal atmospheric conditions from a distance of at least 300 feet in front of such golf cart, and a red lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least 200 feet to the rear of such golf cart.

b. In lieu of the red lamp, the golf cart may be equipped at the rear with two red reflectors of a diameter of not less than three inches which are so designed and located as to height and which are maintained so that each reflector is visible for at least 500 feet when approached by a motor vehicle displaying lawful undimmed headlights.

(9) Golf carts must be operated in accordance with all applicable state and local laws and ordinances, including all laws, regulations and ordinances pertaining to the possession and use of alcoholic beverages.

(10) Golf carts must have the basic equipment supplied by the manufacturer, including a vehicle identification number. Such equipment must include all safety devices as installed by said manufacturer, including lights and reflectors if the vehicle is to be operated at any time before sunrise or after sunset, as provided in section 34-278.

(11) The chief of police, or his designee, may prohibit the operation of golf carts on any street or road if the chief determines that the prohibition is necessary in the interest of safety.

(Code 1982, § 12-232; Ord. No. 02-008, § 1, 3-14-2002; Ord. No. 06-003, 2-9-2006; Ord. No. 2010-Code-05, 7-15-2010)

Sec. 34-279. Streets and roads approved for use.

(a) Golf carts authorized for use under the provisions of this article may be operated in the town on public streets and roads only within the Preston PUD and on those public streets and roads in the town that directly connect portions of the Preston PUD to each other. The following requirements must also be met as follows:

(1) Golf carts may only be operated on local streets and roads with a posted speed limit for motor vehicles of 30 miles per hour or less, provided, however, that golf carts may cross streets and roads with higher speed limits at designated golf cart crossing locations or at intersections in accordance with the rules of the road.

(2) Golf carts shall cross to the opposite side of local streets only at designated crossing locations unless an exigent circumstance exists where the golf cart operator must take an evasive action(s).

(3) Golf carts shall not be operated on the sidewalks except to cross over to a street or road from a private drive or at an approved crossing location.

(4) Golf carts shall not be operated on or across any public or private properties without the permission of the property owner.

(b) During an emergency situation or at a special event, any police officer supervising or controlling traffic may direct that golf carts be operated on or upon other locations.
(Code 1982, § 12-233; Ord. No. 02-008, § 1, 3-14-2002)

Sec. 34-280. Other residential streets and roads approved for use of golf carts.

(a) *Applicability.* Golf carts may also be operated upon certain public residential streets in a development that includes residential areas with at least one thousand dwelling units, and that has been issued a certificate from the chief of police ("certificate") in accordance with this section. To be issued a certificate, the property owner or developer (for undeveloped parcels) or the home owners association (jointly "owner") shall provide adequate documentation that the residential portion of the development meets all of the following criteria:

(1) The residential area within which golf carts may be operated must encompass a minimum of 100 total acres and a minimum of 200 total dwelling units. Such residential area shall consist of defined neighborhoods, subdivisions, and/or groups of neighborhoods or subdivisions bounded by any designated thoroughfare.

(2) The residential area within which golf carts may be operated shall include a recreation and/or community center for residents of the development that offers social, educational and/or fitness programs.

(3) The owner shall provide a written proposal ("proposal") for the use of golf carts on public residential streets within the development. The proposal shall include:

a. A proposed plan showing the nature of the streets where such carts are proposed to be used, including street widths, speed limits, the existence of any on-street parking, and other related information as deemed necessary by the town; and

b. A signage plan showing the local residential streets or roads where golf carts may be used, designated crossing locations, the boundary of allowable areas for golf cart use, and other directional information ("signage plan").

(b) Upon receipt of the adequate documentation, the Town of Cary will review the documentation, proposal and signage plan with engineering and public safety consideration given to the nature of the residential development and the design of roads within the residential development, including, but not limited to, sight distances, horizontal and vertical curvature, intersections, speed limits, parking, and road widths of the specific public streets where golf carts are proposed to be operated. If the residential development meets the criteria above and the proposal appears to adequately address the considerations stated above, the police department may issue a certificate. The certificate shall be conditioned upon the development maintaining its qualifying status hereunder and continuing to meet the requirements specified herein. Upon the issuance of a certificate, owner shall post all areas shown on signage plan with sign approved by the planning department prior to the use of any golf cart within the development. All signs shown on signage plan shall be maintained during the term of the certificate by the owner. Additionally, the owner shall create and maintain a golf cart registration system that includes the issuance of numbered stickers for display on registered carts at all times. The Town of Cary reserves the right to revoke or alter the terms of the certificate if significant safety issues arise, without the approval of the owners.

(c) *Operational requirements.* With respect to the operation of golf carts within the residential developments described in this section, the following requirements shall apply:

(1) Golf carts may only be operated on local residential streets and roads with a posted speed limit for motor vehicles of 30 miles per hour or less.

(2) Golf carts may operate on local streets where on-street parking is permitted only as approved per section 34-280(a)(3).

(3) Golf carts are prohibited from crossing collector streets except at identified crossing points.

(4) Golf carts are prohibited from crossing thoroughfare streets and roads except at grade-separated locations.

(5) Golf carts shall not be operated on sidewalks except to cross over to a street or road from a private drive or at an approved crossing location.

(6) Golf carts shall not be operated on or across any public or private properties without the permission of the property owner.

(7) During an emergency situation or at a special event, any public safety officer supervising or controlling traffic may direct any golf cart operator to operate the golf cart on alternate routes of travel.

(8) Golf carts may be operated on public residential streets only between the hours of 7:00 a.m. to 10:00 p.m.

(Ord. No. 06-003, 2-9-2006)

Sec. 34-281. Enforcement.

Violation of this article shall be an infraction, the maximum penalty for which shall be $50.00, provided however, that operating a golf cart under the influence of an impairing substance (i.e., alcohol or drugs) on a public road or highway is not a violation of this article, but a violation of state law, and is punishable as provided therein.
(Code 1982, § 12-234; Ord. No. 02-008, § 1, 3-14-2002; Ord. No. 06-003, 2-9-2006)
Note—Formerly § 24-280.

Sec. 34-282. Liability disclaimer.

This article is adopted to address the interest of public safety. Golf carts are not designed or manufactured to be used on the public streets, and the town in no way advocates or endorses their operation on public streets or roads. The town, by regulating such operation is merely trying to address obvious safety issues, and adoption of this article is not to be relied upon as a determination that operation on public streets is safe or advisable if done in accordance with this article. All persons who operate or ride upon golf carts on public streets or roads do so at their own risk and peril, and must be observant of, and attentive to the safety of themselves and others, including their passengers, other motorists, bicyclists, and pedestrians. The town has no liability under any theory of liability and the town assumes no liability, for permitting golf carts to be operated on the public streets and roads under the special legislation granted by the state's legislature. Any person who operates a golf cart is responsible for procuring liability insurance sufficient to cover the risk involved in using a golf cart on the public streets and roads.
(Code 1982, § 12-235; Ord. No. 02-008, § 1, 3-14-2002; Ord. No. 06-003, 2-9-2006)
Note—Formerly § 24-281.

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Editor's note—Traffic schedules are maintained in the Town Clerk's Office.

Chapter 35

RESERVED

Chapter 36

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ARTICLE I. IN GENERAL

Sec. 36-1. Tampering with water or sewer systems Protection of systems on certain days.

(a) No person shall cut, break, obstruct, damage, change, alter or otherwise interfere or tamper with, in any manner, any water pipe, water main, hydrant, sewer pipe, water tank or any other thing which is a part of the waterworks or sewer system.

(b) No person shall make any connection to any portion of the water or sewer system or perform any excavation or other work adjacent to or near said system or make any street or other repairs which might endanger said water or sewer system on any legal holidays of the town or on Saturdays or Sundays without the prior written permission of the town manager.

(c) No person shall operate any valve on the town water system without the prior notification and approval of the town of Cary.

(d) Penalties for violation.

(1) *Civil.*

a. The first violation of this section shall subject the offender to a civil penalty in the amount of $250.00, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.

b. All subsequent violations of this section by the same person shall subject the offender to a civil penalty in the amount of $1,000.00 per violation, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.

c. The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

(2) *Criminal.* In addition to, or in lieu of, the remedies authorized in subsection (d)(1) above, any violation of this section may be prosecuted as a criminal matter.

(Code 1976, § 17-16; Code 1982, § 19-1; Ord. No. 87-13, § 1, 3-12-1987; Ord. No. 03-003, 1-9-2003)

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

Sec. 36-2. Same Testing and repair equipment.

No person shall maliciously or willfully damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the town and used, or intended to be used, for the purposes of making measurements, tests, examinations or repairs to the sewer system or water system of the town.

(Code 1976, § 17-29; Code 1982, § 19-2)

State law reference—Interference with water meters, G.S. 14-151.1.

Sec. 36-3. Connections—Application.

No connection shall be made to any sewer, reclaimed water, or water main or to any sewer, reclaimed water, or water lateral ("new service connection" or "new connection") except after the written application therefor has been approved by the Town in accordance with policy statements and/or standard procedures established by the Town.
(Code 1976, § 17-3; Code 1982, § 19-3; Ord. No. 98-018, 10-8-1998; Ord. No. 2018-Code-03, § 1, 6-28-2018)

Sec. 36-4. Same—Subdivisions.

(a) Both the water distribution system and the sewage collection system in any particular area of a subdivision will be 100 percent completed, tested, sterilized and approved for use before any permit for connection to these systems will be issued.

(b) If the complete paving of streets in the area, including curb and gutter, cannot be accomplished in the time necessary for moving in the homes constructed on the property, exception could be granted by the council to allow for the use of certain homes falling in the above category; provided, that the developer of the property will furnish to the town a bond, approved by the council, guaranteeing the completion of the streets in question; and provided further, that this type of permit will not be issued to more than 20 percent of the homes in any given subdivision section.

(c) No structure located upon a subdivision lot shall be permitted to be connected to town water or sewer lines until such time as the subdivision has been approved by the council.

(d) Application for a permit to connect to water and/or sewer ("new connection") must be made prior to the issuance of any building permit for a dwelling unit. The fees for water and/or sewer service connections shall be set from time to time by the council.
(Code 1976, § 17-4; Code 1982, § 19-4; Ord. No. 87-13, § 2, 3-12-1987; Ord. No. 98-018, 10-8-1998)

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Sec. 36-5. Utility Connections.

(a) *Authority of town.* The town shall install and retain ownership of all public utility meters.

(b) *Utility connection fees.* Every person, firm, partnership or corporation connecting to the town utility system shall pay connection fees as established by the town council in the annual operating budget, except when the town does not make the connection.

(c) All utility connections shall be made in accordance with policy statements and/or standard procedures established by the Town.
(Code 1976, § 17-5; Code 1982, § 19-5; Ord. No. 79-23, § 1, 9-27-1979; Ord. No. 79-30, § 1, 11-8-1979; Ord. No. 84-3, § 1, 3-8-1984; Ord. No. 95-011, 3-27-1995; Ord. No. 2018-Code-03, § 1, 6-28-2018)

Sec. 36-6. Development fees.

(a) Water and sewer system development fees shall be established for service imposed with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs.

(b) Development fee charges shall be collected by method and amount as stated in the annual utility capital improvements budget ordinance and in accordance with G.S. Chapter 162A, Article 8.

(c) Water and sewer system development fees shall be in addition to all other charges prescribed by ordinance or resolution now or hereafter in effect by the town.
(Code 1976, § 17-6; Code 1982, § 19-6; Ord. No. 79-28, §§ 1, 2, 10-11-1979; Ord. No. 82-9, § 1, 8-12-1982; Ord. No. 84-22(A), § 1, 11-8-1984; Ord. No. 86-25(a), § 1, 6-26-1986; Ord. No. 97-031, § 1, 8-14-1997; Ord. No. 02-016, 6-13-2002; Ord. No. 2011-Code-07, 10-13-2011; Ord. No. 2018-Code-03, § 1, 6-28-2018)

Sec. 36-7. Electrical and plumbing inspection.

No building or structure shall be connected to the water or the sewage disposal systems of the town until the wiring and electrical service and all plumbing installations within said structure shall have been inspected and approved by the building inspectors of the town as prescribed by chapter 8 of this Code.
(Code 1976, § 17-8; Code 1982, § 19-7)

Sec. 36-8. Service charges.

The monthly service charges for water and sewer service shall be established each year as a part of the annual operating budget ordinance.
(Code 1976, § 17-10; Code 1982, § 19-8; Ord. No. 78-3, §§ 1, 2, 4-13-1978; Ord. No. 80-16, § 1, 7-24-1980; Ord. No. 82-15, § 1, 9-23-1982; Ord. No. 84-4, § 1, 3-8-1984)

Sec. 36-9. Bills due when presented.

All water, sewer, and garbage bills are due and payable when presented and shall become delinquent ten days after the billing date. If a bill has not been paid by the delinquent date of the next bill, water service shall be discontinued. No water service shall thereafter be rendered until all charges and fees outstanding, including disconnection and reconnection fees, have been paid in full.
(Code 1976, § 17-12; Code 1982, § 19-9; Ord. No. 78-12, § 1, 9-14-1978; Ord. No. 79-1, § 1, 1-25-1979; Ord. No. 84-5, § 1, 3-8-1984; Ord. No. 84-20, § 1, 9-27-1984)

State law reference—Enforcement of rates, G.S. 160A-314.

Sec. 36-10. Disclaimer of liability.

The town shall not be held liable for:

(1) Any claim or offset for damage or injury caused by or resulting from the performance without negligence of any act or duty herein authorized or required for the conduct, operation and maintenance of services and facilities relating to the furnishing of water and enforcement of penalties for nonpayment of charges thereof.

(2) Any damage caused by or resulting in the shutting off of the water supply at any premises with or without notice for repairs, maintenance or for nonpayment of bills.

(3) Any damage or injury resulting from the failure of any pipe, connection, fixture, appliance or installation in any plumbing system on the outlet side of the water meter at any premises connected with the water supply system of the town.

(4) Any damage resulting from the use of equipment required to maintain public sewer where manhole elevations are above fixture elevations and no backwater device has been installed.

(5) Any other act or thing required for the proper administration of the provisions of this chapter.

(Code 1976, § 17-15; Code 1982, § 19-10)

Sec. 36-11. Bulk water sales to wholesale customers.

(a) *Wholesale customers defined.* Wholesale customers shall be those customers that purchase water or sewer service from the town for resale to other individual retail water or sewer customers. Such wholesale customers can include other local governments or public or private utilities operating inside or outside the corporate boundaries of the town.

(b) *Contract required.* All bulk water sales to wholesale customers, after the effective date of the ordinance from which this section is derived, will be by contract, which shall set out the terms and conditions of the sale.

(c) *Deposit required.* Wholesale customers shall be required to make a deposit to the town in an amount equal to the cumulative deposit that would be required if their individual retail customers each made a deposit as required under section 36-11. Such deposits shall be returned after 36 months as a wholesale customer, including 12 consecutive months with a good credit history with the town.

(d) *Late penalties.* A late penalty equal to two-thirds of one percent per month (eight percent annual) will be charged on invoices after the due date of the invoice. Unless otherwise contained in a contract for service, the due date shall be 30 days after the billing date.
(Code 1982, § 19-11; Ord. No. 89-79, § 1, 9-28-1989; Ord. No. 01-005, 4-12-2001)

Sec. 36-12. Right of entry.

The directors of public works or utilities or the finance director, or any of their assistants, shall have the right to enter, at any reasonable time, any premises for the purposes of billing for services, reading meters, assessing hazards for cross connection control on potable water lines or operating or maintaining any part of the waterworks or sewer works systems as required by this chapter or by the sewer use ordinance.
(Code 1982, § 19-13; Ord. No. 94-037, § 1, 12-8-1994; Ord. No. 99-013, § 2, 8-12-1999; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-13. Sub-metering.

(a) *Definition.* Sub-metering is the metering of water for resale to multifamily or multibusiness premises after that water has been metered for sale purposes by the town.

(b) *Registering.* Any party desiring to sub-meter water purchased from the town must register with the town's finance department prior to any sub-metering activity and pay whatever fees are associated with that registration.

(c) *Penalties.* Any party failing to so register for sub-metering with the town shall be subject to the following penalties:

(1) *Civil.*

a. Any violation of this section shall subject the offender to a civil penalty in the amount of $1,000.00, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.

b. The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

(2) *Criminal.* In addition to, or in lieu of, the remedies authorized in subsection (1), above, any violation of this section may be prosecuted as a criminal matter.

(Code 1982, § 19-15; Ord. No. 01-005, 4-12-2001)

State law reference—Civil penalties, G.S. 160A-175(c).

Sec. 36-14. Maintenance of privately-owned water or sewer pipelines and/or service lines.

(a) Every user or owner/occupant whose premises have a privately-owned water or sewer line(s) and related appurtenances located in the area from the structure to the town's connection of the water distribution or sanitary sewer collection system is required to keep such line(s) in a condition comparable to that of its original design intent. Privately-owned lines are to be free of defects and are only to be used for the delivery of potable water from the town's water distribution system to that premises or for the delivery of wastes from that premises to the town's sanitary sewer system.

(b) Upon becoming aware of a violation of the provision of this section, the town manager or designee shall give notice to the owner and/or occupant of the premises involved. The town manager or designee may direct that within a designated period of time that the malfunction or inappropriate use be corrected. If the staff determines that it is dangerous or prejudicial to the public health, safety or environment the town may summarily remove, abate, or remedy the situation. Specifically, based upon such a finding, notice will be given to correct, repair, and make functioning to the original design the violation within time specified in such notice. Refusal or failure to comply with such notice may result in the town manager or designee directing staff to take the appropriate steps for the correction and repair of the line, as specified in the notice. The expense of the action shall be paid by person in default (owner, user, or property management firm) and if not paid, a lien shall be placed upon the land or premises where the violation arose to be collected as unpaid taxes.

(Code 1982, § 19-16; Ord. No. 99-021, 12-9-1999)

Secs. 36-15—36-33. Reserved.

ARTICLE II. WATER AND SEWER EXTENSIONS

Sec. 36-34. Generally; payment of expense.

All water and sewer extensions to property outside the corporate limits, and all water and sewer extensions to property inside the corporate limits which is developed subsequent to or annexed by voluntary petition subsequent to December 1, 1976, shall be made at the sole expense of the owner, unless water and sewer extensions are made by the town under existing assessment policies. All water and sewer extensions to property within the corporate limits which was developed prior to December 1, 1976, and which was located within the corporate limits prior to December 1, 1976, shall

be made to the property line at the expense of the town. Nothing in this section shall relieve any owner or developer of property from payment of development fees, connection charges or other charges made in conjunction with extension of or connection to water and sewer lines.
(Code 1976, § 17-20; Code 1982, § 19-22; Ord. No. 76-40, § 1, 11-18-1976; Ord. No. 82-9, § 2, 8-12-1982; Ord. No. 02-016, 6-13-2002)

Sec. 36-35. Ownership of mains.

All mains extended and constructed under this article shall be of such size and material and shall be laid in such manner as contained in the town's overall master utility plan and engineering standards. All mains so constructed or extended shall be and remain the property of the town.
(Code 1976, § 17-21; Code 1982, § 19-23)

Sec. 36-36. Street repairs at expense of property owner.

Repaving and repairing of all streets required to be breached to lay and construct mains under this article shall be done at the expense of the property owner obtaining the extension of water and sewer lines.
(Code 1976, § 17-22; Code 1982, § 19-24)

Sec. 36-37. Permit for construction or operation of, or change to, water distribution system, wastewater collection system, or reclaimed water system—Prohibited activities; application; conformance.

(a) No person shall do or carry out any of the things or activities listed in subsections (a)(1)—(3) below concerning a water distribution system (hereafter "water system"), wastewater collection system (sometimes hereafter "sanitary sewer system"), or reclaimed water system, which is, or is proposed to become, a part of the town water system, wastewater collection system, or reclaimed water system, and is located within the town utility service area, as such term is defined in G.S. 143-215.1(f), unless such person shall have applied for and shall have received from the town a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit. The term "water system" shall mean and include, but shall not be limited to, water distribution lines, including required fire hydrants, valves, air release valves and manholes. The term "sanitary sewer system" shall mean and include, but shall not be limited to, sanitary sewer lines, manholes, wastewater pumping stations, and force mains, including required valves, air release valves and cleanouts located in the public rights-of-way. The term "reclaimed water system" shall mean and include, but shall not be limited to, reclaimed water lines, including required valves, air release valves, and manholes. Activities prohibited without a permit shall be as follows:

(1) Construct or operate any water system, sanitary sewer system, or reclaimed water system;

(2) Alter, extend, or change the construction or method of operation of any existing or proposed water, sanitary sewer system, or reclaimed water system; or

(3) Enter into a contract for the construction and installation of any water system, sanitary sewer system, or reclaimed water system, or for the alteration or extension of such a system.

(b) Any person proposing to undertake any thing or activity described in subsection (a) of this section shall make timely and proper application on such form(s) as may be prescribed by the director of utilities, or his or her designee, (hereafter "director") and provide such information as may be required by the director. A copy of all applications for permits subject to this section and of all approved permits and plans shall be provided to the state department of environmental quality (DEQ) pursuant to applicable law.

(c) All water systems, sanitary sewer systems, or reclaimed water systems proposed for connection to the town water system, sanitary sewer system, or reclaimed water system and all proposed modifications to any existing portion of the town water system, sanitary sewer system, or reclaimed water system shall be designed, constructed and installed in conformance with applicable provisions of the then current town standard specifications and details manual (hereafter "town standards") and any other town rules, policies and procedures (hereafter "town requirements"). Any engineering plans, specifications and profiles submitted by applicants for water systems, sanitary sewer systems, or reclaimed water systems, and modifications shall be prepared by or under the direct supervision of an engineer licensed to practice in the state, shall bear the seal of such engineer, and shall be subject to approval by the director. Such plans, specifications and profiles shall be prepared at the expense of the applicant. The director shall maintain a copy of the current town standards and town requirements for public inspection.

(d) The denial of an application for a permit, subject to the provisions of this section, shall be made in writing and shall contain each reason for the denial and the town's estimate of the changes in the applicant's proposed activities or plan which will be required in order that the applicant may obtain a permit. Nothing in such estimate shall preclude or otherwise bar the town from denying a permit which incorporates such changes, based upon changed circumstances or information not previously known by the town.
(Code 1982, § 19-25; Ord. No. 95-021, 6-22-1995; Ord. No. 04-010, § 19-25, 9-9-2004; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-38. Same—Processing of applications.

(a) Each application subject to section 36-37 shall be accompanied by a fee, which shall be set forth in the town's schedule of charges and fees. A copy of the current fee schedule shall be maintained by the director and made available for inspection upon request. Any application which is not accompanied by a fee in the proper amount may be considered incomplete.

(b) The director shall review the fee, plans, specifications and other project data accompanying an application, and shall determine if the application and accompanying material are complete and in a form acceptable to the director. The director shall acknowledge receipt of a complete application.

(c) The director shall take final action on all permit applications not later than 90 days following receipt of a complete application; however, no permit shall be issued until final approval has also been given by the town engineering department or town council for any related development plan. All permits issued shall be in writing; provided, however, in the event construction has not begun pursuant to an issued permit within one year of the date of the permit, the permit shall expire and a new permit must be applied for and obtained by the applicant in accordance with sections 36-37

through 36-41. Construction and operation shall strictly conform to the permit requirements. A permit may contain such conditions as the director determines to be reasonably necessary, considering the factors on which final action on a permit can be based. Final action on any permit shall be based upon the design, capacity and manner of operation of the appropriate town water system, sanitary sewer system, or reclaimed water system; effectuating the purposes of all applicable rules, regulations, statutes and ordinances of the town, the state, and the United States of America; and on the town standards and town requirements.

(d) If the application is not complete, the application shall be returned to the applicant. The director shall advise the applicant in writing:

(1) How the application can be modified to make it complete and acceptable; and

(2) That the time for the director to take final action on an application does not begin until receipt of a complete, corrected application.

(e) Any permit issued by the director, pursuant to sections 36-37 through 36-41, is subject to revocation, suspension, or modification, in whole or in part, upon 14 days' written notice to the applicant by the director for good cause, including, but not limited to:

(1) Violation of any terms or conditions of sections 36-37 through 36-41 or the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

(3) Refusal of or by the permittee or its contractors, agents or employees to allow authorized officers, employees or agents of the town, upon presentation of credentials, to inspect or observe any activity, system, or other work required by the permittee's permit.

(Code 1982, § 19-26; Ord. No. 95-021, 6-22-1995; Ord. No. 04-010, § 19-26, 9-9-2004)

Sec. 36-39. Same—Enforcement.

(a) Any person that violates, fails to comply with, or continues to violate any provision of sections 36-37 through 36-41 or any permit issued hereunder shall be liable to the town for a maximum civil penalty of up to $10,000.00 per violation per day for as long as the violation(s) continues. Each day on which a violation shall occur or continue shall be deemed a separate and distinct violation. In determining the amount of the civil penalty, the director shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, efforts to correct the violation, the compliance history of the person against whom the violation is assessed, cost of enforcement to the town, whether the violation was committed willfully or intentionally, and any other factor as justice requires.

(b) If any person violates the provisions of sections 36-37 through 36-41 or the terms or conditions of any permit issued hereunder, a civil action may be commenced in the general court of justice in the name of the town for such legal and equitable relief as may be appropriate.

(c) The remedies provided herein are not exclusive. The town may take any one, all, or any combination of these actions against any person in violation of the provisions of sections 36-37 through 36-41 or the terms or conditions of any permit issued hereunder.
(Code 1982, § 19-27; Ord. No. 95-021, 6-22-1995)

State law reference—Civil penalties, G.S. 160A-175(c).

Sec. 36-40. Same—Hearing.

(a) *Persons entitled to hearing.* Any person whose application for a permit under section 36-38 is denied, any person whose application for a permit is issued subject to conditions the applicant finds unacceptable, any person whose permit is revoked or suspended, and any person against whom a penalty is assessed pursuant to section 36-39 (each of whom is hereafter referred to as "aggrieved person") is entitled to a hearing pursuant to this section.

(b) *Demand for hearing.*

(1) The aggrieved person shall exercise such right to a hearing by making a written demand for a hearing in accordance with this subsection.

(2) Any person making a demand for a hearing shall deliver the demand to the director within 30 days of:

a. The date of the contested permit;

b. The date of the notice of denial of a permit application;

c. The date of the notice of a revocation or suspension of an issued permit; or

d. The date a penalty was assessed, as the case may be.

(c) *Contents of demand.* The written demand for a hearing must identify separately and with particularity:

(1) The aggrieved person;

(2) The specific permit provisions or conditions or other issues contested or to be considered;

(3) The reasons for the objection; and

(4) Any alternate provisions, conditions or terms the aggrieved person proposes.

(d) *Conduct of hearing.*

(1) The hearing shall be conducted by the director and shall be subject to such rules as have been approved by the council or the director as hereinafter set forth. If the demand for a hearing is not made in accordance with the provisions of this section, the director shall reject the demand and any right to a hearing shall be terminated. If any person demanding a hearing shall fail to comply with an order of the director or with any rules issued by the director or approved by the council concerning the conduct of the hearing, the director may reject the demand and any right to a hearing shall be terminated. Within 90 days of the receipt of the written demand for a hearing, the director shall conduct a hearing and issue

a final order or decision. The director shall transmit a copy of the final order or decision to the aggrieved person by registered or certified mail. No further review of the director's final order or decision will be allowed, except as set forth in sections 36-37 through 36-41.

(2) The director may submit rules to the council for approval concerning the conduct of the hearing and any other matter associated with the hearing. Such rules may impose requirements in addition to the provisions of this section. Upon approval by the council, such rules shall be as effective as if set forth in this section. The director shall make a copy of such rules available for inspection upon the request of any person.

(3) The director is authorized to take any action which is reasonably necessary or convenient in considering a demand for a hearing and in resolving the issues raised therein so long as such action is not contrary to the provisions of sections 36-37 through 36-41, any rules approved by the council, or other applicable law.

(4) The director may appoint a hearing officer to conduct any hearing authorized by this section. A hearing officer shall have the same authority to conduct a hearing and reach a decision as is provided to the director; provided that the decision of the hearing officer shall not be final, but shall be a recommended decision for consideration by the director. The director may approve such decision without change, reject the decision and require a new or continued hearing, or issue a different or revised decision which is supported by evidence presented at the hearing. The director may refer a recommended decision of a hearing officer to the town manager or designee. In the event of a referral, the town manager or designee shall have the same authority to act upon a recommended decision of a hearing officer as is provided to the director. The decision of the director or, in the event of a referral, of the town manager or designee shall be final. A final order may provide that the action which is the basis for the demand for a hearing is approved without change or may modify such action in any manner that is supported by the evidence presented at the hearing.

(5) The director may provide for any part of the hearing to be recorded by any reasonable means, including, but not limited to, audio and/or video recording, stenographer, or court reporter. A transcript of any hearing, or part thereof, which is recorded need not be prepared unless requested. The original of a requested transcript shall be filed with the director. Each person shall bear the cost of the transcript which such person requests, including any copy thereof.

(e) *Judicial review.* Any person against whom a final order or decision of the director is made, pursuant to the hearing conducted under section 36-40, may seek judicial review of the order or decision by filing a written petition within 30 days after the date of notice of the order or decision, but not thereafter, with the superior court of the county. If not previously requested, such person shall request in writing that a transcript be prepared for every part of the hearing which was recorded. Such request shall be made at or before the time that the petition is filed. A copy of the petition shall be served on the town in the manner required by law. Within 30 days after service of a copy of the petition upon the town or such other time as may be ordered by the court, the town shall prepare and transmit to the court the original or a certified copy of the official record of the hearing as hereinafter set forth. The official record of the hearing shall consist of all notices, motions and other similar documents; all documentary and tangible evidence tendered at the hearing; and the final order or decision. A transcript of each part of the hearing that was recorded shall be included in the official

record as an exhibit, if available at the time the remaining portion of the official record is transmitted to the court. If the transcript is not available at that time, it shall be transmitted to the court as soon as reasonably possible after the transcript has been prepared. If testimony is taken and not recorded, a narrative summary of any testimony taken shall be prepared and transmitted to the court as an exhibit to the official record.
(Code 1982, § 19-28; Ord. No. 95-021, 6-22-1995)

Sec. 36-41. Same—Changes to permitting program.

The town permitting program, as set forth herein, has been established pursuant to authority contained in G.S. 130A-317 and G.S. 143-215.1(f) and rules promulgated thereunder. Amendments to G.S. 130A-317 and 143-215.1(f) and rules promulgated thereunder that affect the town permitting program shall be incorporated into the town permitting program within 60 days of the effective date of such amendments, or as otherwise required by law.
(Code 1982, § 19-29; Ord. No. 95-021, 6-22-1995)

Sec. 36-42. Reimbursement Policy.

(a) The cost of installing all utility facilities within a subdivision or on property being connected, and the cost of installing all utility facilities between such subdivision or property being developed and the existing facilities of the town, shall be borne by the property being so connected, except as explicitly provided in this Section.

(b) In instances where utility system extensions and facilities provide utility service beyond the scope of a specific development, the developer may request reimbursement from the Town by one or more of the following methods, as authorized by G.S. 160A-320; 160A-499; and Town of Cary Land Development Ordinance Section 3.24.

(1) *Oversize Reimbursement.* Developers who construct utility facilities in accordance with the Town's utility master plans, but sized greater than that required for the project being developed, may be eligible for reimbursement. Such "oversize reimbursement" shall be requested during development plan review and will be processed by the Town in accordance with policy statements and/or standard procedures established by the Town.

(2) *Fee Credit and Reimbursement Contract.* Developers who construct off-site utility facilities, or on-site utility facilities of a regional nature (including pump stations), may be eligible to enter into a fee credit and reimbursement contract with the Town, whereby water and/or sewer system development fees may be waived and costs in excess of those development fees may be eligible for reimbursement by the Town. Such "reimbursement contracts" shall be requested by the developer; shall cover only those utility facilities expressly referred to in the contract; and will be processed by the Town in accordance with policy statements and/or standard procedures established by the Town.

(Ord. No. 2018-Code-03, § 1, 6-28-2018)

Secs. 36-43—36-70. Reserved.

ARTICLE III. WATER

DIVISION 1. GENERALLY

Sec. 36-71. Permit for use of groundwaters; application; fee.

(a) No person shall construct, install or operate a new facility to withdraw, obtain or utilize groundwaters, for any purpose, unless such person shall first obtain a permit therefor from the town.

(b) The application for permit shall set forth such facts as necessary to enable the town to establish and maintain adequate records of groundwater use within the town.

(c) The permit fee shall be as established by the town.
(Code 1982, § 19-35; Ord. No. 82-8, § 1, 8-12-1982)

Sec. 36-72. Use of town water.

No person shall take or carry away water from any hydrant or public fountain or supply or sell water to other persons, except as permitted by the town for sub-metering purposes. The fire hydrants are for the use of the fire department for fighting fires and are not to be used by any unauthorized person for any purpose.
(Code 1976, § 17-18; Code 1982, § 19-36; Ord. No. 01-005, 4-12-2001)

Sec. 36-73. Protection of water system.

No person shall throw trash, rubbish, sticks, stones or any other substance into the storage tank or reservoir or other water system of the town or on the grounds around the wells of the town or upon the grounds surrounding the buildings of any part of and pertaining to the town water system.
(Code 1976, § 17-17; Code 1982, § 19-37)

Sec. 36-74. Connection required.

(a) *Improving property.* Every person improving property located within the corporate limits of the town which requires a new well or expansions to an existing well shall make an approved water connection if either of the following conditions exist:

(1) Property abuts or adjoins a street or alley along which is located a water line; or

(2) Property is located adjacent to a town water line.

This connection shall be to the house, building or other place of human habitation or occupancy, provided that no person shall be required to cross the private property of another to make such a connection.

(b) *Compliance with codes.* All water connections shall be in accordance with the North Carolina State Plumbing Code and the requirements of this Code and any and all local, state and federal requirements that apply.

(c) *Fees due.* At the time any connection request made by the property owner to the town has been approved, all water connection charges, development fees and outstanding assessment, or fee in lieu of assessment, shall be due and payable.

(d) *Occupancy.* No person shall occupy any house or building for human habitation after the water supply has been cut off, except in cases where it is cut off temporarily for the purpose of effecting necessary repairs.

(e) *Private wells.* Private wells used for water supply to habitable structures, which are approved by the county board of health, may be constructed within the town where property is located in such a manner that compliance with this section is not possible. If the private well fails and/or the property cannot support a well and the property is within 300 feet of a water line, the owner shall make an approved water connection as required in this section.
(Code 1976, § 17-1; Code 1982, § 19-38; Ord. No. 90-25, § 1, 3-22-1990; Ord. No. 93-12, § 1, 3-11-1993; Ord. No. 99-013, § 2, 8-12-1999; Ord. No. 99-019, 10-14-1999; Ord. No. 02-005, 2-28-2002; Ord. No. 02-016, 6-13-2002)

State law reference—Power to require connections, G.S. 160A-317.

Sec. 36-75. Single source of water supply.

(a) No water service connection shall be made from any town water main to any premises supplied with water from any other source without written permission first obtained from the town manager. No such statement of permission shall vest any right of continuation thereof, and the permission may be revoked and terminated at any time by the town manager. No water service

connection shall be made or permitted to serve more than one premises, and no water line connection shall be made or used to carry town water from any premises so served to any other premises.

(b) If for any reason any premises are supplied with town water from two or more water service connections to town water mains located on different streets, each service connection shall be provided with a check valve of a type approved by the town manager.
(Code 1976, § 17-7; Code 1982, § 19-39)

Sec. 36-76. Separate meters.

(a) Every new irrigation system installation shall be separately connected to an irrigation meter. Every existing nonsingle family residential irrigation system shall be taken off of regular water meters and connected to a separate irrigation meter within 18 months of the effective date of the ordinance from which this section is derived.

(b) Waivers from this "separate meter" requirement for existing nonresidential irrigation systems may be granted by the director of utilities ("director") within 18 months after the effective date of the ordinance from which this section is derived, if:

(1) The cost of modification for the separate irrigation meter will exceed the greater of:

a. Twelve hundred dollars; or

b. Twenty percent of the initial installation cost for the irrigation system, plus all improvements; and

(2) The customer enters into a written agreement with the town to establish a site-specific water allocation for irrigation.

(c) If the customer ever exceeds the site-specific water allocation assigned to him, then the waiver shall lapse and the customer shall be required to install a separate irrigation meter. The director shall establish the procedures for the documentation necessary for establishing such situations.
(Code 1976, § 17-9; Code 1982, § 19-40; Ord. No. 02-025, 11-21-2002; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-77. Sale of water from public works facility and hydrants.

Water may be purchased from the town at designated facilities or from any fire hydrant under the following conditions:

(1) The charge for such water shall be at the rate established in the annual operating budget ordinance.

(2) When water is obtained through a fire hydrant only town employees may turn on or off the fire hydrant.

(3) The fire hydrant shall have a hydrant meter and RPZ backflow preventer properly attached to register the amount of water being purchased. Only town employees shall attach or detach the hydrant meter.

(4) The charge of the use of a hydrant meter and accessory equipment shall be as established in the annual operating budget ordinance.

(5) The finance department shall establish rules for the use of hydrant meters and accessory equipment, hours of operation, etc., as may be necessary.

(6) Reclaimed water may only be purchased, when available, at the water reclamation facilities during hours established by the town's finance department.

(Code 1982, § 19-41; Ord. No. 76-37, § 1, 10-14-1976; Ord. No. 85-26, § 1, 8-22-1985; Ord. No. 87-13, § 3, 3-12-1987; Ord. No. 99-013, § 2, 8-12-1999)

Sec. 36-78. Cross connection control, backflow prevention assemblies required, program established.

(a) *Application, purpose, authorization.* This section applies to all persons who use, or connect in any way to, the Town of Cary's public water system. The purpose of this section is to protect the health and safety of the public by protecting the public water system from contaminants"backflowing" into the public water system from private water systems. This section:

(1) Requires the installation of backflow prevention assemblies to prevent contaminants from "backflowing" or siphoning through uncontrolled cross connections into the public water system; and

(2) Establishing a backflow prevention program.

(b) *Definitions.* As used in this article, the following definitions apply:

(1) *Backflow prevention assembly or BPA* means a device used to prevent backflow into the public water system from a consumer's water service connection. The type of BPA required by this section depends on the degree of contamination hazard. An "approved" BPA is one that has been approved by the American Society of Sanitary Engineers (ASSE) or the American Water Works Association (AWWA), or USC, or the Foundation for Cross Connection Control and Hydraulic Research.

(2) *Certified Backflow prevention assembly technician or technician* means any person who has received from the town a certificate to install, test, repair, overhaul, or maintain approved backflow prevention assemblies. A backflow prevention assembly technician certificate will be issued to any person who:

a. Demonstrates knowledge of applicable laws, rules, and regulations applying to BPAs in the state of North Carolina and in the town, and

b. Is a licensed plumber or has at least two years experience under and is employed by a North Carolina licensed plumber or plumbing contractor, or has equivalent qualifications acceptable to the town, and

c. Holds a certificate of completion from an approved training program in the installation, testing, repair, overhaul and maintenance of backflow prevention assemblies.

(3) *Consumer* means any customer of the town's public water system, or any person, firm, or entity using or receiving water from the town's public water system or owning or possessing property or facilities that receive water from, or connect to the town's public water system.

(4) *Contamination hazard* means an existing or potential cross connection that presents the risk of impairment of the quality of the water in the public water system and creates a potential or actual hazard to the public health through the introduction of hazardous or toxic substances or waterborne health hazards in the form of physical or chemical contaminants or biological organisms and pathogens.

(5) *Cross connection* means any unprotected actual or potential connection or structural arrangement between the town's public water system and any other pipe, conduit, source or system through which it is possible to introduce any contamination other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices or arrangements through which or because of which backflow can or may occur are considered to be cross connections.

(6) *Degree of hazard* means whether the hazard or potential hazard is a health hazard, or a non-health hazard. The degree of hazard shall be determined by the town from the evaluation of conditions within a private water system and the use to which a property connected to public system is put.

(7) *Health hazard* means an actual or potential threat of contamination of a physical, chemical, biological, pathogenic or toxic nature to the public or private water system to such a degree or intensity that there would be a danger to health. Examples of waterborne hazards include, but are not limited to:

a. *Physical:* Radioisotopes/radionuclides;

b. *Chemical:* Lead, mercury and other heavy metals, organic compounds, other toxins and hazardous substances;

c. *Biological:* Microorganisms and pathogens like cryptosporidium, typhoid, cholera and E. Coli.

(8) *Imminent Hazard* means a hazard situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(9) *Non-health Hazard* means an actual or potential threat to the quality of water of the public water system or a private water system. A non-health hazard is one that, if introduced into the public water supply system, could be a nuisance to water users, but would not adversely affect human health.

(10) *Private water system* means that part of a water service connection to the town's public water system which is located on the consumer's side of the town's water meter. A private water system may be a water service line to a single premise or structure or it may be a privately owned and maintained water distribution system, which serves more than one structure or premises. For the purpose of this section, once water from the town's public water system passes through the meter to the consumer's side, that water is considered part of the private water system.

(11) *Public water system* means the town of Cary water system and includes all of the system for the provision to the public of potable water for human consumption through pipes or other constructed conveyances and includes:

a. Any collection, treatment, storage or distribution facility and all appurtenance to those facilities under control of the town and used primarily in connection with the town's water system; and

b. Any collection, treatment, storage or distribution facility and all appurtenance to those facilities not under the control of the town that is used primarily in connection with the town's water system.

(c) *New unprotected cross-connections prohibited, existing cross-connections to be protected.* All consumers and any other person or entity receiving water from the town's public water system shall be in violation of this section if they fail to comply with any of the following:

(1) *New water service connections.* No new residential or nonresidential water service connections to the public water system shall be made unless equipped with an approved backflow prevention assembly. The BPA shall be tested and properly functioning as prescribed herein prior to the issuance of a certificate of occupancy for any building. All new nonresidential construction plans and specifications shall be made available to the town for review to determine the hazard level to the town's public water system.

(2) *Existing water service connections.* An approved backflow prevention assembly shall be installed on all existing cross connections to the town's public water system upon notification of the need for installation by the town. Upon determining that a backflow prevention assembly is required to be installed on an existing water service connection the town will notify the consumer in writing of:

a. The requirement for installation;

b. The hazard level which has been established for that consumer by the town based upon the use of their premises;

c. The type of approved backflow prevention assembly required;

d. The date by which it must be installed and tested. The consumer will have sixty (60) calendar days within which to install and test the BPA after notice is given.

(d) *Contamination prohibited.* No consumer shall cause or allow any contamination of the town's public water system through uncontrolled backflow or backsiphonage from or through their private water system.

(e) *No cross-connections.* No private water system may be connected to any private well, or to any spring, or to any other water source not approved by the state of North Carolina as a public water supply and commissioned by the town as a public water supply source, or to any other private source of water, or to any plumbing located on private property which may be connected to any of the above. It shall also be unlawful to have plumbing cross-connected or so installed that water from the town's public water system and water from or in any private water system may in any way become intermingled.

(f) *Compliance.* No private water system shall be connected in any manner to the town's public water system nor may any service connection be made or maintained to the town's public water system unless the requirements of this Chapter have been satisfied.

(g) *Approved BPAs and installations required.* Only an approved backflow prevention assembly shall be installed to meet the requirements of this section. Any backflow prevention assembly that is installed that is not an approved BPA, or any installation of any backflow prevention assembly which is not installed in accordance with the provisions hereof shall be a violation of this section.

(h) *Notification of change in use of property.* Within ten (10) calendar days of the date of any change in use of any nonresidential property connected to the town's public water system, the consumer shall notify the town so that the town can reassess the hazard level of that use.

(i) *Certification and testing program.*

(1) Installation, maintenance, testing and repair of BPAs shall be done only by a certified backflow prevention assembly technician. Consumers shall have a technician test the BPA for proper operation and that technician shall certify the results in writing to the town.

(2) Any consumer or other person who removes or repairs any cross-connection condition shall notify the town for the purpose of securing an inspection or re-inspection by the town.

(3) All backflow prevention assemblies required by this section shall be installed in accordance with the manufacturer's instructions.

(4) All backflow prevention assemblies required by this section must be installed and maintained on the consumer's premises as part of the consumer's water system.

(5) Ownership, installation, testing and maintenance of a backflow prevention assembly and all costs associated therewith shall be the responsibility of the consumer.

(6) Each backflow prevention assembly required under this section must be accessible by the town.

(7) Any bypass around a backflow prevention assembly at any time, including when the BPA is in need of testing, repair or replacement, is prohibited. When it is not possible to interrupt water service, the consumer shall provide for the parallel installation of an approved backflow prevention assembly.

(8) Backflow prevention assemblies with test ports or test cocks shall not be installed below ground.

(j) *Testing and repair of backflow prevention assemblies.*

(1) *Testing/Certification.* A certified backflow prevention assembly technician shall conduct testing of backflow prevention assemblies at the consumer's expense. Tests shall be conducted upon installation, and annually thereafter, with a record of all testing and repairs retained by the consumer. Each consumer shall send a copy of the report, signed by the certified backflow prevention assembly technician, for each test or repair to the town within 30 days after the completion of each test or repair. Such records must also be maintained by the consumer on forms provided by the town for a period of three years.

(2) *Repairs.* Any time that repairs to a backflow prevention assembly are deemed necessary, whether through annual testing or routine inspection by the consumer or by the town, these repairs must be completed within a time specified below, in accordance with the hazard level.

a. Health hazard facilities: Within 14 days of discovery.

b. Nonhealth hazard facilities: Within 28 days of discovery.

(3) *Equipment.* All certified backflow prevention assembly technicians must obtain and employ backflow prevention assembly test equipment which has been evaluated and/or approved by the town. All test equipment shall be registered with the town and shall be calibrated annually, and certified to the town as to such calibration, employing a calibration method acceptable to the town.

(4) *Records.* It is unlawful for any consumer or certified backflow prevention assembly technician to submit any record to the town which is false or fraudulent in any material respect. It is unlawful for any consumer or certified backflow prevention assembly technician to fail to submit any record, which is required by this section to the town. Such violations may result in any of the enforcement actions outlined in paragraph (m) of this section.

(k) *Protection of the public water system during bulk water sales.* No bulk water may be taken except as a sale from a fire hydrant through a metered assembly provided by the town which includes a reduced pressure principle backflow prevention assembly. In addition, any truck, tank, or receiving vessel which is directly or indirectly connected to any pipe, hose, or outlet from the town's public water system must be equipped with an approved, permanently installed, air gap designed to create a minimum of 4 inches separation between the receiving tank or vessel and the connection to the town's public water system.

(l) *Backflow prevention assembly protection.* Any backflow prevention assembly which might be subjected to pressure surges or abnormally high pressures shall be protected against possible damage by a device approved by the town, such as a water hammer arrestor or a pressure reducing valve.

(m) *Violations.* Any consumer or other person who fails to comply with any provision of this section, or who fails to comply with any notice, citation, or order made hereunder, or who shall install or alter a private water system in violation of this section or any detailed statement of specifications or plans submitted and approved hereunder, or any certificate or permit issued hereunder, or who shall fail to comply with such a notice, citation, or order within the time fixed therein, or who shall submit a false or fraudulent report, or who fails to submit a report shall be in violation of this section for each such occurrence or noncompliance and shall be subject to enforcement as provided in this section. The remedies provided for violations of this section, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(1) The Public Works Director or designee shall serve a written notice of violation to any person who violates this section. Such notice shall be personally delivered, or delivered by certified mail, return receipt requested. A copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, and the regular mail is not returned by the post office within ten (10) days after the mailing.

(2) Such notice of violation shall set forth the violation and the time period within which the violation must be corrected. The violation must be corrected within the time period specified in the notice of violation. If the town determines that the violation has created or contributed to the existence of an imminent health hazard, the consumer may be required to correct the violation immediately. If the violation is cured or corrected within the time period specified in the notice of violation, then the Town shall take no further action against the person.

(3) Any person who, after being given a notice of violation pursuant to Section 36-78(m)(1) does not comply within the time period set forth in the notice of violation, and who continues such violation, shall be subject to the penalties and remedies set forth in Section 36-78(m)(4). The following citation procedure shall be used:

(A) Citation for Violation. The Public Works Director or designee shall serve a written citation on the alleged violator by any of the methods specified in Section 36-78(m)(1).

(B) Content of Citation. The citation shall again describe the nature of the violation and any actions that the alleged violator must take to cure or correct the violation, and shall specify the amount of any civil penalty levied against the alleged violator.

(C) Corrective Action Required. The civil penalty shall be paid and the violation shall be cured or corrected, within seventy-two (72) hours of receipt of the citation by the alleged violator, or such other time period, not to exceed thirty (30) days, as the citation may specify.

(D) Action for Recovery of Penalty. If payment is not made, or the violation is not cured or corrected, within the time specified in the citation, then the Town may recover the civil penalty together with all costs by filing one or more civil actions in the name of the Town in the nature of a suit to collect a debt. The town attorney is hereby authorized to file suit on behalf of the town to collect any civil penalties.

(E) Suspension or Termination of Water Service; Revocation of Permits. Water service may be suspended or terminated to a consumer, and/or applicable permits revoked, if the consumer fails to correct a violation in a timely manner. Suspension or termination of water service or revocation of permits will be without prejudice to the town's ability to assert any other remedy available to the town against the consumer or any other person responsible for the violation.

(4) Violations of this Section 36-78 shall subject the offender to the following civil penalties:

Description	Penalty	Frequency
Unprotected cross connection – wholesale customers (as defined in Section 36-11) or Unprotected cross connection – public water system not under the control of the town	$1,000	With first citation and thereafter for each thirty-day period or part thereof in which the violation persists
Unprotected cross connection – non-wholesale customers	$500	With first citation and thereafter for each thirty-day period or part thereof in which the violation persists
Falsifying records	$500	Per occurrence
Failing to maintain and test residential irrigation backflow prevention assemblies	$500	With first citation and thereafter for each thirty-day period or part thereof in which the violation persists
Any other violation of this section	$500	Per occurrence

(5) The town may increase any civil penalty assessed by 50 percent of the maximum civil penalty associated with the violation for a second violation of the same provision within a two-year period. The town may increase any civil penalty by doubling the amount of the penalty for a third violation of the same provision within a two-year period. Water service may be terminated after a third violation of the same provision within a two-year period.

(6) Any person violating any provision of this section shall pay to the town all expenses incurred by the town in repairing any damage to the public water system caused in whole or in part by such violation and any expense incurred by the town in investigating such violation. All such expenses shall be in addition to the civil penalty assessed with the violation.

(7) The application of civil penalties shall not be held to prevent the enforced correction or removal of any prohibited condition.

(8) If a certified backflow prevention assembly technician submits falsified records to the town, the town may permanently revoke that certified backflow prevention assembly technician's town issued certification.

(n) *Administration of program.* The Public Works Director for the town, or designee, shall administer this program.
(Code 1982, § 19-42; Ord. No. 03-014, 11-13-2003; Ord. No. 2018-Code-01, 4-5-2018)

State law reference(s)—Civil penalties, G.S. 160A-175(c).

Sec. 36-79. Turning on water without authority.

No person shall turn on the water from the town water mains into a meter or private connection, which connection has been cut off by the town for the nonpayment of water bill or other justified reason, without authority of the town.
(Code 1976, § 17-13; Code 1982, § 19-43)

Sec. 36-80. Water service provided by town includes only alternate day outdoor irrigation.

(a) *Definitions.* As used in this section, the following terms are defined as follows:

Irrigate the landscape, irrigation of the landscape, and *irrigation* means the act of applying water to the outdoor landscape by any means involving sprinklers or automatic watering devices, including but not limited to the use of sprinklers attached to hoses, and installed underground sprinkler systems.

Landscape means the natural or modified ground outside the border of the foundation wall of the constructed area of the property.

Person means user of the town's potable water system.

Reclaimed or reused water means the treated plant effluent from a wastewater treatment facility that is further disinfected and piped or distributed in bulk form.

(b) *Irrigation of landscape prohibited except in accordance with this section.* No person shall use potable water supplied by the town water system to irrigate the landscape on any property except on alternate days assigned to that property for irrigating the landscape. The days of the week on which irrigation of the landscape can take place at a particular property shall be determined by that property's street address. The Town Manager or designee shall develop a Standard Procedure setting forth irrigation days for the various street addresses and other details of alternate day watering. Such Standard Procedure shall be developed, maintained and amended as needed to keep the irrigation days and administration procedures consistent with recommendations from area experts such as the North Carolina Agricultural Extension Service and technological advances. The use of "reclaimed" or "reused" water, pond water, rainwater and well water or other nonpotable water is not governed by this section, nor is the watering of plant material and lawns by use of drip irrigation, watering cans, hand-held hoses, and other hand-held watering tools.

(c) *Violations.* Each day a violation occurs is a separate violation. Any person violating this section may be cited for each day on which a violation occurs.

(d) *Penalties.* Penalties for violation of this section are as set forth herein. The town may use any one, or combination, of penalties and enforcement mechanisms. Imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.

(1) *Civil penalties.* After the second notice a violation of this section shall subject the violator to a civil penalty as set forth in the town budget fee schedule. Violators shall be issued a written citation that must be paid within two weeks of the service date of the citation. The citation may be served by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty is collectible in a civil action in the nature of debt. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the town manager, the town utilities director, or their designee, is authorized to verify and sign complaints on behalf of the town in such suits. The director of utilities or designee, a police officer, or other town employee duly authorized to enforce the alternate day watering service level may issue a citation for violations of this section.

(2) *Criminal penalties.* In addition to or in lieu of civil penalties, violation of this section shall constitute a misdemeanor. A police officer may initiate the criminal process as provided by law.

(e) *Emergency suspension of service.* The town manager may restrict or suspend water flow (water service) to any person who violates this section if the manager makes a water shortage declaration and/or that person has failed to comply on numerous occasions. The manager or designee shall make findings of fact to indicate the nature of the water emergency and the actions of that person that exacerbate the emergency situation. The manager may order:

(1) That such water uses as irrigation of the landscape be suspended entirely for a specified period of time;

(2) That water flow to that person be restricted; or

(3) That water service to that person be suspended for a specified period of time.

Suspension of water service shall be performed in accordance with the town's ordinances, policies, procedures and practices. In the event that the manager orders that irrigation of the landscape be suspended for a specified period of time, the manager or designee shall have the right and privilege to access, on private property if necessary, all necessary valves and flow restriction devices to isolate the flow of water to the irrigation system. The manager, or designee, shall also have the right and privilege of access specified above to disconnect water service at the meter, if the manager has ordered that water service be suspended for a specified period of time. The standard reconnection charge shall be paid for the reconnection of any water service terminated at the meter pursuant to the current town ordinances and procedures.

(f) *Exceptions.*

(1) The Town Manager or designee may grant temporary exceptions permits to the provisions of this section 36-80 for periods of up to 45 days for the establishment of new turf year-round or for the re-establishment of turf seasonally. Such temporary exception permits shall be granted based upon the valid application of a customer. The exception permit application process and other details as may be necessary to further define and implement temporary exception permits will be defined in the Standard Procedure referenced in Sec. 36-80(b). Such Standard Procedure shall be developed,

maintained and amended as needed to keep the conditions under which exception permits are granted consistent with recommendations from area experts such as the North Carolina Agricultural Extension Service and technological advances.
(Code 1982, § 19-44; Ord. No. 00-009, 4-13-2000; Ord. No. 02-012, 4-24-2002; Ord. No. 2007-05, § 1, 5-10-2007; Ord. No. 2008-Code-01, 6-12-2008; Ord. No. 2009-Code-07, 5-14-2009; Ord. No. 2010-Code-04, 6-9-2010; Ord. No. 2019-Code-04, 10-10-2019)

State law reference(s)—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 36-81. Water shortage response.

(a) *Purpose and intent.* This section 36-81 is designed to maintain and protect the public health, safety and welfare by providing a process for reducing demand for potable water to protect the potable water resources of the town during actual or potential water shortages. This section identifies types of water shortages and authorizes the manager to issue a water shortage declaration and to execute the Town's Water Shortage Response Plan (WSRP). This section shall be liberally construed to implement such purpose and intent.

(b) *Definitions.* The following definitions apply, except where the context clearly indicates a different meaning:

(1) *Customer* means any person in whose name the town maintains an account for water use, or who is responsible for payment of water passing through a particular meter. All customers are responsible for any use of water that passes through the meter for which they have an account or are otherwise responsible and are deemed to be users hereunder.

(2) *Manager* means the Town Manager for the Town of Cary or designee, or, in the absence of the Town Manager, the Deputy Town Manager, the Assistant Town Manager or designee.

(3) *Nonresidential user* means any person who uses town potable water, other than a residential user; nonresidential user includes those who purchase town water in bulk.

(4) *Person* has the definition found in section 1-2 of this Code and includes all federal, state and local governmental entities.

(5) *Potable water* or *treated water* means any treated water introduced by the town into its potable water distribution system, including water purchased from other entities.

(6) *Raw water* means all water available to the town for treatment by virtue of the town's water rights or withdrawal permits.

(7) *Residential user* means any person who uses town water received through a meter serving a single or multifamily dwelling unit, but not a meter serving educational or other institutions, hotels, motels, or similar commercial establishments (which are deemed to be 'nonresidential users').

(8) *Trigger* means conditions defined in the WSRP which will cause a water shortage to be declared or ended, or cause water shortage response stages to be increased or decreased in severity.

(9) *User* means any person using town potable water, and includes residential users and nonresidential users.

(10) *Water shortage* means a shortage of potable water in the town due to a raw water shortage, a water system shortage or any other water shortage.

"Raw water shortage" means a shortage of raw water available for the town to treat. Raw water shortages are most commonly caused by drought conditions, but may have other causes, including problems with the raw water intake or pipes.

"Water system shortage" means a shortage of potable water in the town due to problems with the town's water treatment or distribution system or affecting the town's ability to treat, transmit or store treated water.

"Other water shortage" means a shortage of potable water in the town due to causes other than raw water shortage or water system shortage, including any declaration of emergency or call for water use restrictions by state or federal agencies or any unforeseen circumstance such as contamination which may or does result in treated water supply not meeting normal water demand.

(11) *Water Shortage Response Plan (WSRP)* means a plan to respond to an actual or threatened water shortage, approved as required by N.C.G.S. Section 143-355.2.

(c) *Water Shortage Response Plan.* The town director of utilities ("director") is hereby authorized to prepare a Water Shortage Response Plan (WSRP) to be reviewed and approved in accordance with N.C.G.S. Section 143-355.2. The water conservation measures contained in the WSRP may be more stringent than the minimum water conservation measures required by N.C.G.S. Section 143-355.2. The WSRP, and any amendments to it, shall be adopted by the Town Council.

(d) *Authorization.* The manager is hereby authorized to implement the water shortage measures in the WSRP and to provide such other conditions and provisions as may be necessary to successfully carry out the goals of this section.

(e) *Water shortage rates.* Upon issuance of a water shortage declaration or at such other times as the council deems necessary, the council may, at any regular, special or emergency meeting, adopt water shortage rates designed to encourage water use reduction. Further, due to situations brought on by drought or other special infrastructure needs associated with a water emergency, the town council may adopt special rates that will reflect the additional costs associated with treatment and distribution of water. Any such rates may take effect as directed by council.

(f) *Application, violation, enforcement, penalties.* This section applies to all persons using town water, inside and outside the town limits, regardless of whether they have a contract for water service with the town, provided mandatory schedules or limits shall not apply to any public or volunteer fire department while fighting a fire. A customer of the town shall be responsible for all violations that occur in connection with water that passes through the meter for which the customer is billed by the town. Any person who uses water in violation of a restriction, schedule, or ban imposed on the use of water during a declared water shortage as defined in the Water Shortage Response Plan, or who otherwise violates the provisions of this section, or who impedes or interferes with any action

undertaken or ordered pursuant to this section and policies adopted hereunder, shall be subject to the penalties listed below:

(1) *Enforcement by police officers.* Upon the declaration of a water shortage, the manager and every police officer of the town may enforce any restrictions or bans imposed on the use of water.

(2) *Suspicion of violation.* Whenever the town has reasonable cause to believe that a person is violating any of the provisions of this section or any policy or declaration adopted hereunder, the town shall immediately notify that person of the violation by affixing a written notice of the violation to the property where the violation occurred and/or personally delivering or mailing such notice to the customer of record and to any other person known to the town who is responsible for the violation or its correction. Such notice shall describe the violation, order that it be corrected, cured or abated immediately, and warn that more severe measures, such as civil penalties, criminal charges or termination of water service may be brought, assessed or imposed. If the order is not complied with immediately, the manager may undertake enforcement action as follows.

(3) *Enforcement action.* Any person who, after being given notice of violation, does not comply with this section or policy adopted hereunder immediately shall, at the option of the town, be subject to any of the following: Civil penalties, criminal penalties, termination of water service, injunctive relief, or any appropriate equitable remedy issuing from a court of competent jurisdiction.

a. *Criminal penalties.* Any person may be charged with violation of this section or policy adopted hereunder and prosecuted in district court. Any person so charged and found guilty of violating this section or policy shall be guilty of a misdemeanor. Each day's violation shall constitute a separate offense. The penalty for violation shall be a maximum fine of $50.00 per occurrence. The imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.

b. *Civil penalties.* In addition to or in lieu of criminal prosecution, violation of this section or any policy adopted hereunder may subject the violator or customer to a civil penalty as set forth in the town budget fee schedule per violation per day for so long as the violation exists. Each day on which a violation occurs or continues shall constitute a separate and distinct violation. The town shall serve a written citation on the violator, and the customer, if different, by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty for a first violation of this section shall be deferred and either (1) waived if there has been no subsequent violation of this section during the declared water shortage; or (2) will become due immediately if a subsequent violation of this section occurs during the declared water shortage, in which case it will be assessed in addition to the civil penalty imposed for any subsequent violations. The civil penalty is collectible in a civil action in the nature of debt. The imposition of one or more penalties for a violation shall not excuse any violation or permit it to continue.

[Text continues on p. CD36:35]

c. *Termination of service.* A third violation of this section shall result in termination of service. The standard reconnection charge shall be paid for the reconnection of any water service terminated pursuant to the current town ordinances and procedures.

(4) *Appeal.* Any person against whom enforcement action has been taken, hereafter referred to as "aggrieved party," may seek judicial review of the action by filing a written petition within 30 days of the date of the notice of violation, but not thereafter.

(5) *Variance.* Any person may submit an application to the utilities director for a variance from specific requirements of the WSRP, using the process defined in the WSRP.

(Code 1982, § 19-45; Ord. No. 95-020, 6-8-1995; Ord. No. 96-006, § 1, 7-11-1996; Ord. No. 2007-05, § 2, 5-10-2007; Ord. No. 2008-Code-01, 6-12-2008; Ord. No. 2009-Code-08, 6-10-2009; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-82. Installation of meters.

(a) *Time of installation.* Water meters will be installed as soon after the issuance of the building permit as is practical for the town.

(b) *Installation and ownership.* The town shall install and retain ownership of all water meters, which are connected directly to a town maintained water line.

(c) *Responsibility for meter and water usage.* The person or firm to which the building permit is issued shall be responsible for both the meter and the water usage through the meter until such time as a certificate of occupancy is issued.

(d) *Lost, stolen, or damaged meters.* The person or firm to which the building permit is issued shall be responsible for purchasing from the town a replacement meter in case the original meter is lost, stolen, or damaged. The cost of such replacement shall be the actual cost of the meter plus 20 percent for administrative and installation cost. The town shall not issue a certificate of occupancy until such time as all such replacement charges have been paid in full and a fully operational meter of the correct size and type is in place at the location for which the certificate of occupancy is requested.

(e) *Water usage through the meter.* The person or firm to which the building permit is issued shall be responsible for the utility payment for all water usage through the meter. The cost of such usage shall be at the same rate as all other customers as established in the annual operating budget of the town. The town may issue a certificate of occupancy before the utility bill is paid; however, the person or firm to which the building permit was issued may not establish any other utility account with the town until such utility bill is paid in full.

(f) *Penalties for violations.*

(1) *Civil.*

a. Any violation of this section shall subject the offender to a civil penalty in the amount of $1,000.00, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.

b. The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

(2) *Criminal.* In addition to, or in lieu of, the remedies authorized in subsection (e)(1) above, any violation of this section may be prosecuted as a criminal matter.

(Code 1982, § 19-46; Ord. No. 84-24, § 1, 12-13-1984; Ord. No. 01-005, 4-12-2001)

State law reference(s)—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 36-83. Water waste.

(a) *Definitions.* The following terms, when used in this section, shall have the meanings ascribed herein:

Impervious surface means any artificially created surface which cannot be penetrated by water or which causes water to run off the surface, including streets, driveways, sidewalks and rooftops.

Person means any individual, partnership, firm, corporation, limited liability company, or other legal entity in whose name water is provided and billed by the town.

Repeated or flagrant wasting of water means and includes those situations where persons who have received notice that they are wasting water continue to do so in the same manner. It does not mean those persons who waste water on solitary or isolated occasions.

Town water means all water that passes through the town's water distribution system. This term does not include town water that is sold by the town to other governmental entities.

Water waste means any of the following:

(1) Using town water so that it falls directly onto impervious surfaces to the extent that running water leaves the property and enters gutters, storm drains, ditches and other conveyances; or

(2) Using town water to the extent that it is allowed to accumulate on the surface of the ground and leave the property and enter gutters, storm drains, ditches and other conveyances.

(3) Knowingly allow town water to escape through leaks, breaks, or malfunctions within the water user's plumbing or distribution system for any period of time beyond which such a leak or break should reasonably have been repaired or corrected.

(4) Willfully or negligently wasting water in any other manner.

(b) *Water waste prohibited.*

(1) The utilities director or designee shall identify persons who waste water.

(2) Whenever the director finds that any person wastes water, the director may give such person oral or written notice of that fact, with recommendations as to how the wasting of

water can be eliminated. Such recommendations might include, but are not limited to, redirection of sprinkler heads, resetting of system timers, addition of devices to prevent water pressure fluctuations, or changes in location of sprinkler systems.

(3) Whenever the director finds that any person repeatedly or flagrantly wastes water, the director may serve upon such person a written notice ("notice of water waste" or "notice"). Such notice shall be served by personal delivery, by mail, or by certified mail, return receipt requested, and shall identify the person and the location at which water is being wasted while watering, shall identify the manner in which the water is being wasted, and shall specify a time within which the wasting of water shall cease. The notice shall also warn that more severe measures (such as imposition of civil penalties or restriction or termination of water service) may be assessed or brought against the person unless the wasting of water ceases within the time provided. The time given to cease wasting water may range from a requirement for immediate compliance to 30 days, depending upon the facts and circumstances of each case. For instance, if a remedy involves moving a portable hose or sprinkler, immediate compliance may be appropriate; if a remedy involves repairing or replacing a sprinkler head, several days may be required; if the remedy involves more extensive or expensive work, up to 30 days may be necessary. If the remedy is effected, there shall be no further action against that person as to that particular violation.

(4) Any person who continues to waste water after the period of time specified in the notice for ceasing such activity shall be issued a citation by personal delivery, mail, or certified mail, return receipt requested, and shall be subject to the civil penalty and enforcement procedures specified in subsection (c) below. The civil penalty shall be paid within 30 days of receipt of the citation.

(c) *Penalties.*

(1) *Civil penalties.* Violations of this section shall subject the offender to a civil penalty as set forth in the town budget fee schedule, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited. Because watering may not take place every day, a violation shall be deemed continuing if the same wasting of water takes place on one or more days at the same location described in the notice and citation.

(2) *Other enforcement action.* Additionally, the director may restrict or terminate water service in accordance with law.

(Code 1982, § 19-47; Ord. No. 97-027, 6-12-1997; Ord. No. 2008-Code-01, 6-12-2008; Ord. No. 2009-Code-07, 5-14-2009)

State law reference(s)—Civil penalties, G.S. 160A-175(c).

Sec. 36-84. Rain sensors on automatic irrigation systems.

(a) *Definitions.* The following terms, when used in this section, shall have the meanings indicated below. Other terms used herein shall have the same definitions as provided in section 36-83.

Irrigation system means a device or combination of devices having a hose, pipe, or other conduit installed in the landscape which transmits town water, through which device or combination of devices town water or a mixture of town water and chemicals is drawn and applied to residential or commercial lawns, landscapes or greenspace.

Rain sensor means an automatic device that will override the irrigation cycle of an irrigation system, thus turning it off, when a predetermined amount of rain has fallen. To meet the requirements of this section, a rain sensor shall be adjusted to shut off irrigation systems when up to one-fourth inch of rain has fallen.

(b) *Required installation.*

(1) *New installation.* From and after August 14, 1997, rain sensors shall be required on all automatic irrigation systems that will receive town water.

(2) *Existing systems.* Rain sensors shall be installed on all existing automatic irrigation systems that receive town water on or before May 1, 1998.

(c) *Required maintenance.* All rain sensors shall be adjusted and set so that they automatically shut off the irrigation system after not more than one-fourth inch of rainfall has occurred. All rain sensors shall be installed according to manufacturer's instructions in a location that will provide full exposure to rainfall such that accuracy of operation is assured and shall be maintained in good working condition. No person shall, with the intent of circumventing the purpose of this section, adjust either the rain sensor or irrigation system so that the rain sensor is not able to override and turn off the irrigation system after one-fourth inch of rain has fallen.

(d) *Enforcement.* The utilities director or designee shall be responsible for enforcing this section. Whenever the director determines that a violation of this section exists, the director shall issue a written citation identifying the date, location and nature of the violation, the person cited, and specifying the penalty and the date by which the penalty must be paid.

(e) *Penalties.*

(1) *Civil penalties.* After the second notice any person who violates any provision of this section shall be subject to a civil penalty as set forth in the town budget fee schedule for each day thereafter that the violation continues, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within 30 days after he or she has been cited. Because watering may not take place every day, a violation shall be deemed continuing if an irrigation system that was previously the subject of a citation has the same violation on more than one day.

(2) *Termination of service.* Additionally, the utilities director may restrict or terminate water service in accordance with law.

(Code 1982, § 19-48; Ord. No. 97-032, 8-14-1997; Ord. No. 2007-05, § 3, 5-10-2007; Ord. No. 2008-Code-01, 6-12-2008)

State law reference(s)—Civil penalties, G.S. 160A-175(c).

Secs. 36-85—36-111. Reserved.

DIVISION 2. SERVICE OUTSIDE OF TOWN

Sec. 36-112. Availability of water supply.

The town manager is authorized to sell water to persons residing outside the corporate limits of the town and to connect the water lines of such persons to public water lines of the town so long as available water supplies of the town permit such sales (as the manager in his discretion may determine), but such sales shall be subject to the provisions set forth in this division.
(Code 1976, § 17-31; Code 1982, § 19-57)

Sec. 36-113. Rates.

The rates for the sale of water and sewerage services to consumers residing outside the corporate limits of the town shall be as set forth in section 36-8.
(Code 1976, § 17-32; Code 1982, § 19-58)

Sec. 36-114. Disclaimer of liability.

The town shall not be liable to any of the consumers residing outside the corporate limits of the town for damages caused by failure of the town to supply water in any quantity or at any pressure or for damages to any of such consumers caused by too great pressure of water supplied.
(Code 1976, § 17-35; Code 1982, § 19-59)

State law reference—Disclaimer of liability, G.S. 160A-312.

Sec. 36-115. Agreements—Generally.

No person desiring to be supplied with water outside the corporate limits of the town shall be permitted to purchase or use such water until he has agreed, in writing, to the provisions of this division.
(Code 1976, § 17-36; Code 1982, § 19-60)

Sec. 36-116. Same—Annexation.

No water or sewer service shall be provided to any property outside of the municipal limits of the town except upon compliance with one of the following annexation requirements:

(1) If the property is contiguous to the municipal limits of the town, the property owners shall immediately petition for and obtain annexation of such property into the municipal limits of the town; or

(2) If the property is not contiguous to the municipal, limits of the town, the property owners shall immediately petition for and obtain annexation of such property into the municipal limits of the town, provided that the town council determines that it is in the best interest of the town and that the town can provide all municipal services; or

(3) If the town council decides not to immediately annex the property, the property owners shall enter into a written agreement with the town for annexation at such future date as the town council determines that it is in the best interest of the town and that the town can provide

municipal services to the property. The agreement shall include provision for the town to terminate water and/or sewer service if the property owner fails to fulfill all requirements to annex.

(Code 1976, § 17-37; Code 1982, § 19-61; Ord. No. 88-15, § 1, 9-22-1988; Ord. No. 90-55, § 1, 10-11-1990)

Sec. 36-117. Discontinuance.

When the town manager, in his discretion, shall determine that the shortness of water supplies of the town necessitates the discontinuance of the sale of water to consumers residing outside the corporate limits of the town, the manager is authorized and empowered immediately to disconnect the lines of such outside consumers, or any of them, from the public water supply lines of the town and without notice to such consumers.

(Code 1976, § 17-33; Code 1982, § 19-62)

Secs. 36-118—36-149. Reserved.

ARTICLE IV. SEWERS

DIVISION 1. GENERALLY

Sec. 36-150. Connection required.

(a) *Improving property.* Every person improving property located within the corporate limits of the town which requires a new wastewater disposal system or expansions to an existing system shall make an approved connection with the town's sanitary sewer system if either of the following conditions exist:

(1) Property abuts or adjoins a street or alley along which is located a sanitary sewer line; or

(2) Property is located adjacent to a town sanitary sewer line.

This connection shall be to all water closets, bathtubs, showers, lavatories, toilets, sinks and all other wastewater generating plumbing units, appliances and sanitary sewer drains located or to be located on the property, provided that no person shall be required to cross the private property of another to make such a connection. In addition, if the property cannot support a wastewater disposal system and the property is within 300 feet of a sewer line, the owner shall make an approved sewer connection as required in the previous sentence.

(b) *Compliance with codes.* All sanitary sewer connections shall be in accordance with the North Carolina State Plumbing Code and the requirements of this Code.

(c) *Fees due.* At the time any connection request made by the property owner to the town has been approved, all sanitary sewer connection charges, development fees and outstanding assessment, or fee in lieu of assessment, shall be due and payable.

(d) *Occupancy.* No person shall occupy any house or building for human habitation after the sanitary sewer supply has been cut off, except in cases where it is cut off temporarily for the purpose of effecting necessary repairs.
(Code 1976, 17-2; Code 1982, § 19-76; Ord. No. 90-26, § 1, 3-22-1990; Ord. No. 93-13, § 1, 3-11-1993; Ord. No. 99-019, 10-14-1999; Ord. No. 02-005, 2-28-2002; Ord. No. 02-016, 6-13-2002)

Sec. 36-151. Septic tank; privy.

(a) Waste disposal systems (septic tanks) which are approved by the county board of health may be constructed within the town where property is located in such a manner that compliance with section 36-150 of this chapter is not possible. If the private waste disposal system fails and/or the property can not support a waste disposal system and the property is within 300 feet of a sewer line, the owner shall make an approved sewer connection as required in section 36-150.

(b) No privy shall be constructed within the corporate limits of the town.
(Code 1976, § 17-19; Code 1982, § 19-77; Ord. No. 02-005, 2-28-2002)

Secs. 36-152—36-170. Reserved.

DIVISION 2. SEWER USE

Sec. 36-171. Purpose and policy.

(a) This division sets forth uniform requirements for users of the wastewater collection and treatment system of the town of Cary (sometimes hereafter "town"), and enables the town to comply with permits and interlocal agreements and all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR 403), as amended from time to time. The objectives of this division are:

(1) To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting residual solids;

(2) To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state, into the atmosphere, or will otherwise be incompatible with the municipal wastewater system;

(3) To promote reuse and recycling of industrial wastewater and residual solids from the municipal wastewater system;

(4) To protect municipal personnel who may be affected by sewage, residual solids, and effluent in the course of their employment and to protect the general public;

(5) To provide for equitable distribution of the cost of acquisition, operation, maintenance and improvement of the municipal wastewater system; and

(6) To ensure that the town complies with its NPDES and nondischarge permit conditions; residual solids use and disposal requirements; other wastewater-related permits and agreements; and any other federal or state laws to which the municipal wastewater system is subject.

(b) This division regulates all users of the municipal wastewater system through the imposition and enforcement of general requirements for all users and the issuance of wastewater discharge permits to certain users. It authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs of the town's POTW and the program described herein.

(c) This division shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312. Except as otherwise provided herein, the director of the town department of utilities shall administer, implement, and enforce the provisions of this division. Any powers granted to or imposed upon the director may be delegated by the director to other town personnel. By discharging wastewater into the municipal wastewater system, users located within or outside the town limits agree to comply with, and shall be subject to, the provisions of this division, all rules and regulations established hereunder, and the terms and conditions of any permits, enforcement actions, or orders issued hereunder.

(d) The town through agreement authorized by law including G.S. 160A-313, may delegate or authorize the administration, implementation, and enforcement provision of the pretreatment program in a specified sewer service area of the town to another POTW that has a state approved sewer use ordinance and pretreatment program and is receiving wastewater from significant industrial users. Users whose wastewater is permitted by a POTW other than the town, shall meet sewer use ordinance and pretreatment program requirements as established by the receiving POTW.
(Code 1982, § 19-89; Ord. No. 94-036, 12-8-1994; Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-172. Definitions; abbreviations.

(a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this division, shall have the meanings hereinafter designated:

Act or *the Act* shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

Approval authority shall mean the Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources, or his or her designee.

Authorized representative of the user:

(1) If the user is a corporation, "authorized representative" shall mean:

a. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

b. The manager of one or more manufacturing, production, or operations facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations or decisions, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a limited liability company, a partnership or sole proprietorship, an "authorized representative" shall mean a managing partner, general partner or the proprietor, respectively.

(3) If the user is a federal, state or local government facility, an "authorized representative" shall mean a director or the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The persons described in subsections (1) through (3) above may designate another person to be the authorized representative if the authorization is in writing, the authorization designates the individual or position responsible for the overall operation of the facility from which the discharge originates or having an overall responsibility for environmental matters for the company, and the written authorization is received by the town.

(5) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the director prior to or together with any reports to be signed by an authorized representative.

Biochemical oxygen demand (BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, for five days at 20 degrees centigrade, usually expressed as a concentration (e.g. mg/l).

Building sewer shall mean a sewer conveying wastewater from the premises of a user to the POTW.

Bypass shall mean the intentional diversion of wastestreams from any portion of a user's treatment facility.

Categorical standards. See: national categorical pretreatment standard.

Control authority. Refers to the POTW organization if the POTW has an active and approved pretreatment program or the POTW's approval has not been withdrawn by the approval authority.

Director. See: POTW director.

Discharge of wastewater or *discharge* shall mean and includes discharging, spilling, leaking, placing, emptying, contributing, or dumping any wastewater into the town's POTW.

Environmental protection agency or *EPA* shall mean the U.S. Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized EPA official.

Grab sample shall mean a sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

Holding tank waste shall mean any waste from holding tanks, including, but not limited to, such holding tanks as those of vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump trucks.

Indirect discharge shall mean the discharge of nondomestic wastewater into the POTW from any source regulated under section 307(b), (c), or (d) of the Act (33 USC 1317), including holding tank waste.

Industrial user shall mean any user that is a source of indirect discharge.

Interference shall mean the inhibition or disruption of the POTW collection systems, its treatment processes or operations, or its residual solids processes, use or disposal, which causes or contributes to a violation of any requirement of the control authority and/or POTW, if different from the Control Authority, NPDES, collection systems, or nondischarge permit or prevents residual solids use or disposal in compliance with applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage residual solids use or disposal by the POTW in accordance with section 405 of the Act (33 USC 1345), or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 USC 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA), or more stringent state criteria (including those contained in any state residual solids management plan prepared pursuant to Title IV of the SWDA) applicable to the method of disposal or use employed by the POTW.

Kit Creek Pump Station Service Area shall mean the area within which users contribute wastewater to the Kit Creek Pump Station (KCPS), as shown in figure 1.

Medical waste shall mean isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

Middle tier significant industrial user shall mean a user who is subject to national categorical pretreatment standards and that meets the qualifications of 40 CFR Part 403.12(e)(3), may be eligible for reduced sampling and inspection requirements.

National categorical pretreatment standard or *categorical standard* shall mean any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 USC section 1317) which applies to a specific category of users, and which appears in 40 CFR chapter I, subchapter N, parts 405 through 471, as amended from time to time.

National pollutant discharge elimination system permit or *NPDES permit* shall mean a permit issued pursuant to section 402 of the Act (33 USC section 1342), or pursuant to G.S. 143-215.1 by the state under delegation from the EPA.

National prohibited discharge standard or *prohibited discharge standard* shall mean absolute prohibitions against the discharge of certain substances. These prohibitions appear in section 36-173 of this division and are developed under the authority of 307(b) of the Act and 40 CFR, 403.5.

New source shall mean as defined in 40 CFR 403.3(m), including any subsequent amendments and additions.

Noncontact cooling water shall mean water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Nondischarge permit shall mean a disposal system permit issued by the state pursuant to G.S. 143-215.1(d).

Non-significant categorical industrial user shall mean a user subject to national categorical pretreatment standards and that meets the qualifications of 40 CFR Part 403.3(v)(2).

Pass through shall mean a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (and/or POTW's, if different from the control authority) NPDES, collection system, or nondischarge permit, or a downstream water quality standard.

Person has the definition found in Chapter 1, Section 1-2 of this Code and specifically includes all federal, state and local governmental entities.

pH shall mean a measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant shall mean any "waste" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage residual solids, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, metals, or odor).

POTW. See: Publicly owned treatment works.

POTW director or *director* shall mean the director of public works and utilities or his or her designee. Unless specifically provided otherwise, the utility director for the town may act in the absence of the director, and in the absence of both the public works and utilities director and the utility director, the public works director for the town may act for the director.

POTW treatment plant shall mean that portion of the POTW designed to provide treatment to wastewater.

Pretreatment shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system and/or POTW treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d).

Pretreatment program shall mean the program for the control of pollutants introduced into the POTW from nondomestic sources which was developed by the town in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirements shall mean any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standards shall mean prohibited discharge standards, categorical standards, and local limits, including user-specific local limits contained in a wastewater discharge permit.

Prohibited discharge standard. See national prohibited discharge standard.

Publicly owned treatment works (POTW) or *municipal wastewater system* (sometimes also "system") shall mean a treatment works as defined by section 212 of the Act (33 USC 1292), which is owned by the town or owned by others and used by the town through contract or agreement. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal wastewater or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances and appurtenances if they convey wastewater to a POTW treatment plant. For the purposes of this division, "POTW" or “satellite POTW” shall also include any sewers, pipes and other conveyances and appurtenances that convey wastewaters to the town’s POTW from persons located outside the town who are, by contract or agreement with the town, or in any other way, users of the town's POTW. For the purposes of this division, POTW shall also include any treatment works as defined by section 212 of the Act (33 USC 1292), sewers, pipes and other conveyances and appurtenances that are owned by others and that receive wastewater from the town's municipal wastewater system by contract or agreement with the town.

Residual solids shall mean the settled, thickened, biologically reduced semisolid residue containing material removed during the treatment process of municipal wastewater. Residual solids are also known as sludge.

Satellite POTW. See: Publicly owned treatment works (POTW).

Severe property damage shall mean substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production.

Significant industrial user or *SIU* shall mean any industrial user of the POTW who meets any one of the following criteria and is not otherwise exempted pursuant to section 36-187 of this division:

(1) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters); or

(2) Contributes process wastewater which makes up five percent or more of the NPDES, Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, Ammonia, Total Phosphorus, and Total Nitrogen; or

(3) Is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, Subchapter N, Parts 405-471; or is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation, or violating any pretreatment standard or requirement, for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the POTW's sludge disposal options.

Significant noncompliance or *SNC* is the status on noncompliance of a significant industrial user when one or more of the following criteria are met. Additionally, any industrial user which meets criteria 3, 4, or 8 of this definition shall also be SNC.

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceeded, by any magnitude, a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);

(2) Technical review criteria (TRC) violations: defined as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except flow and pH);

(3) Any other violation(s) of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (long term average, daily maximum, instantaneous limit, or narrative standard) or

condition that the control authority or the POTW, if different from the control authority, determines has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the POTW personnel, other town employees, or the public;

(4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health or welfare or to the environment or has resulted in the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and section 36-179(a)(5) of this division to halt or prevent such a discharge;

(5) Violations of compliance schedule milestones contained in a wastewater discharge permit or enforcement order, for starting construction, completing construction, or attaining final compliance when such failure to meet schedule milestones exists for 90 days or more after the schedule date;

(6) Failure to provide reports for compliance schedule, self monitoring data, baseline monitoring reports, 90 day compliance reports, and compliance reports within 45 days of the due date;

(7) Failure to accurately report noncompliance;

(8) Any other violation or group of violations that the control authority and/or the POTW, if different from the control authority, determines will adversely affect the operation or implementation of the pretreatment program.

Sludge. See: Residual solids.

Slug load or *discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that could cause a violation of the prohibited discharge standards contained in section 36-173 of this division.

Standard industrial classification (SIC) shall mean a classification pursuant to the standard industrial classification manual issued by the executive office of the president, office of management and budget, 1987.

Stormwater shall mean any flow occurring during or following any form of natural precipitation and resulting from such precipitation.

Suspended solids shall mean the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

User shall mean any person, including those located outside the jurisdictional limits of the town, who contributes, causes or permits the contribution or discharge of wastewater into the POTW, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.

Wastewater shall mean the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities, and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which are discharged to, contributed into, or otherwise permitted to enter the POTW.

Wastewater discharge permit or *wastewater permit* shall mean a permit as set forth in section 36-175(b) of this division.

Waters of the state shall mean all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(b) The following abbreviations, when used in this division, shall have the designated meanings:

BOD: Biochemical Oxygen Demand.

CBOD: Carbonaceous Biochemical Oxygen Demand.

CFR: Code of Federal Regulations.

COD: Chemical Oxygen Demand.

EPA: Environmental Protection Agency.

gpd: gallons per day.

G.S.: North Carolina General Statutes.

l: liter.

mg: milligrams.

mg/l: milligrams per liter.

NPDES: National Pollutant Discharge Elimination System.

O & M: Operation and Maintenance.

POTW: Publicly Owned Treatment Works.

RCRA: Resource Conservation and Recovery Act.

SIC: Standard Industrial Classification.

SWDA: Solid Waste Disposal Act.

TN: Total Nitrogen.

TKN: Total Kjeldahl Nitrogen

TSS: Total Suspended Solids.

USC: United States Code.

(Code 1982, § 19-90; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-173. Prohibited discharge standards.

Unless specifically provided otherwise, the prohibited discharge standards set forth in this section shall apply to all users of the POTW, including significant industrial users and users subject to national, state or local pretreatment standards or requirements.

(1) *General prohibitions.* No user shall discharge wastewater into the POTW, directly or indirectly, which causes interference or pass-through.

(2) *Specific prohibitions.* No user shall discharge wastewater into the POTW that contains, or has the characteristics of, the following:

a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21, as amended from time to time.

b. Solid or viscous substances which may cause obstruction of the flow in a sanitary sewer or the POTW resulting in interference. This includes, but is not limited to, grease, garbage with particles greater than one-half inch (1/2") in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, and wood.

c. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.

d. Unless otherwise permitted, any wastewater having a pH less than 5.0 or more than 10.5 or wastewater having any other corrosive property capable of causing damage to the POTW, collection system, or equipment. Any pH above 12.5 is considered hazardous under 40 CFR 261.22.

e. Any wastewater containing pollutants, including oxygen-demanding pollutants (BOD, CBOD, COD, etc.), in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference.

f. Any wastewater having a temperature that is greater than 150 degrees Fahrenheit (66 degrees Celsius), or that will inhibit biological activity in the POTW treatment plant resulting in interference. In no case shall a user contribute wastewater, the temperature of which, acting alone or in conjunction with other wastewater, causes the temperature at the introduction into the POTW treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).

g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health or safety problems.

h. Any trucked or hauled pollutants or wastewater, unless it is with the approval of the director, and then only at discharge points designated by the director in accordance with subsection 36-173(11) of this division.

i. Any noxious or malodorous gases, solids, liquids or other wastewaters, which alone or by interaction with other wastes is sufficient to create a public nuisance or hazard to life or is sufficient to prevent entry by authorized town personnel into the sanitary sewer collection system for maintenance or repair.

j. Any substance which may cause the POTW effluent or any other product of the POTW, such as residues, residual solids, or scums, to be unsuitable for reclamation and reuse or which interferes with the reclamation process. In no case shall a substance discharged or contributed to the POTW cause the POTW to be in noncompliance with residual solids use or disposal criteria, including, but not limited to, guidelines, regulations, or permits issued under section 405 of the Act; the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; or state criteria, guidelines, regulations, or permits applicable to the residual solids management method being used.

k. Any substance which will cause the POTW to violate its NPDES or nondischarge permit or the receiving water quality standards.

l. Any wastewater which imparts color which cannot be removed by the treatment process (including, but not limited to, dye wastes and vegetable tanning solutions) and which imparts sufficient color to the POTW effluent to render the waters injurious to public health or secondary recreation or aquatic life and wildlife or which adversely affect the palatability of fish or their aesthetic quality or which impairs the receiving waters for any designated use.

m. Any wastewater containing any radioactive wastes or isotopes, except as specifically approved by the POTW director in compliance with applicable state and federal regulations.

n. Any wastewater which causes a hazard to human life or creates a public nuisance.

o. Stormwater, surface water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, groundwater from any source, and unpolluted industrial wastewater, unless specifically authorized by the director.

p. Fats, oils, or greases of animal or vegetable origin in concentrations greater than a level determined by the director, to cause sewer pipe blockages or in amounts causing adverse accumulation in sewer pipes, resulting in sewer blockage.

q. Any medical wastes, except as specifically authorized by the director in a wastewater discharge permit.

r. Any solids residuals, screenings, or other residues from the pretreatment of industrial wastes.

s. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the POTW.

t. Any material that would be identified as hazardous waste according to 40 CFR 261 if not disposed of in a sewer, except as may be specifically authorized by the director.

u. Any wastewater causing the POTW effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200, as amended from time to time.

v. Wastewater which, acting alone or in conjunction with wastewater from other sources, causes the POTW's effluent to fail a toxicity test.

w. Recognizable portions of the human or animal anatomy.

x. Any wastes containing detergents, surfaces active agents, or other substances which may cause excessive foaming in the POTW.

y. Any wastewater that has two successive readings on an explosion hazard meter of more than five percent or any single reading on such meter more than ten percent of the lower explosive limit (LEL) of the meter. Such readings may be taken at the point of discharge into the system or at any point in the system.

(3) *Storage of substances/action by director.* Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in process or materials storage areas must discharge to the user's pretreatment facility before connecting with the POTW. When the director determines that a user is contributing or discharging to the POTW any pollutant or wastewater which causes interference or pass-through or is contributing or discharging any of the pollutants, substances or wastewater that violate the prohibitions set forth in (2) above, the director may:

a. Advise the user of the potential impact of the contribution on the POTW in accordance with section 36-179 of this division; and

b. Take appropriate action, in accordance with section 36-178 of this division, requiring such user to protect the POTW and sewer collection system from interference, pass-through, blockages, and structural or mechanical failure.

(4) *National categorical pretreatment standards.* Users subject to National Categorical Pretreatment Standards are required to comply with applicable standards as set out in 40 CFR chapter 1, subchapter N, parts 405 through 471, as amended from time to time, which are incorporated herein by reference.

a. Where a categorical standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c), as amended from time to time.

b. When wastewater subject to a categorical standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e), as amended from time to time.

c. A user may obtain a variance from a categorical standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA in developing the categorical standard.

d. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

e. A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.

(5) *Industrial waste survey and local limits.* An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following average discharge limits. Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading or permitted allocation through interlocal agreement, is not exceeded for particular pollutants of concern. KCPS users are subject to additional lower local limits as listed in Section 36-186.

Limits (mg/l)	*Pollutants*
250	CBOD
250	TSS
40	Total Nitrogen
7.0	Total Phosphorus
0.0046	Arsenic, total
0.0057	Cadmium, total
0.072	Copper, total
0.015	Cyanide, total
0.0348	Lead, total
0.000189	Mercury, total
0.0237	Nickel, total
0.0190	Silver, total
0.0279	Chromium, total
0.1395	Zinc, total
25	Ammonia nitrogen

User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits and shall be considered pretreatment standards. The director may impose mass limits in addition to, or in place of, the concentration-based limits set forth above.

Additionally, domestic sewage limits for parameters other than those listed above may be established by the director and shall be based on either actually measured local domestic sewage levels or literature values.

(6) *State standards.* State standards and requirements on discharges shall apply in any case where they are more stringent than federal requirements or limitations or those contained in this division.

(7) *Right of revision.* The town reserves the right to establish and amend standards, including limitations and requirements, which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives set forth in section 36-171 of this division or the general and specific prohibitions in section 36-173 of this division, as is allowed by 40 CFR 403.4.

(8) *Dilution.* No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards or in this division, unless expressly authorized by an applicable pretreatment standard or by any other pollutant-specific limitation developed by the town or state.

(9) *Pretreatment of wastewater.*

a. *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this division and wastewater permits issued under section 36-175(b) of this division, and users shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in section 36-173 of this division within the time limitations specified by the EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance (pretreatment facilities) shall be provided, operated, and maintained at the user's expense. Detailed plans showing the user's pretreatment facilities and operating procedures shall be submitted to the town for review, and shall be approved by the director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town under the provisions of this division. Any subsequent changes in the pretreatment facility or its method of operation shall be reported to, and be approved by, the director prior to the user's initiation of the changes.

b. *Additional pretreatment measures.*

1. Whenever the director deems it necessary, the director may require users to restrict their discharge during peak flow periods; designate that certain wastewater be discharged only into specific sewers; relocate and/or consolidate

points of discharge; separate sewage wastestreams from industrial wastestreams; and require such other conditions as may be necessary to protect the POTW or to determine the user's compliance with the requirements of this division.

2. The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. The director may issue a wastewater discharge permit solely for flow equalization.

3. Grease, oil, and sand interceptors shall be provided by the user when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the director and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user at the user's expense. See also section 36-183 for additional requirements.

4. Users with the potential to discharge flammable substances may be required to install and maintain one or more approved combustible gas detection meters.

(10) *Accidental discharge/slug control plan.* The director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in section 36-172, Definitions. All SIUs must be evaluated within one year of being designated as SIU. The director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the director may develop such a plan for any user. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see section 36-176(e), (f).

An accidental discharge/slug control plan shall address, at a minimum, the following:

a. Description of discharge practices, including nonroutine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the director of any accidental or slug discharge, as required by section 36-176(f) of this division;

d. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures shall include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(11) *Hauled wastewater.*

a. Septic tank waste may not be discharged into the POTW unless the director has given his approval for the discharge. If such approval is granted, septic tank waste may be discharged into the POTW only at locations designated by the director, and only at such times as are established by the director. Such septic tank waste shall conform to the requirements of section 36-173 of this division and any other requirement established by the town. The director may require septic tank waste haulers to obtain wastewater discharge permits.

b. The director may prohibit the discharge into the POTW of hauled industrial waste. If the director permits such discharge, the director shall require haulers of industrial waste to obtain wastewater discharge permits. The director may also require the generators of hauled industrial waste to obtain wastewater discharge permits. The discharge of hauled industrial waste is subject to all the requirements of this division.

c. Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without the prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

d. Industrial waste haulers shall provide a waste-tracking form for every load. The information provided on the form shall include, at a minimum, the following:

1. The name and address of the industrial waste hauler;

2. The permit number of the industrial waste hauler;

3. The permit number of the industrial waste generator, if there is one;

4. The waste hauler truck identification;

5. Names and addresses of sources of all waste;

6. Identification of the type of industry that is the source of the waste; and

7. Volume and characteristics of the waste, including all known or suspected waste constituents and whether any wastes are RCRA hazardous wastes.

(Code 1982, § 19-91; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 05-005, 3-10-2005; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-174. Fees.

(a) *Purpose.* It is the purpose of this division to provide for the recovery from users of the town's wastewater disposal system of costs of the POTW and for the implementation of the program provided for herein. The applicable charges or fees shall be set forth in the town's schedule of charges and fees.

(b) *User charges.* A user charge shall be levied on, and paid by, all users.

(1) The user charge shall reflect, at a minimum, the cost to the town of debt service, and operation and maintenance costs (including, but not limited to, replacement costs) of the POTW.

(2) Each user shall pay its proportionate share of cost based on the volume of the user's flow.

(3) The town manager shall review annually the sewage contributions of users, the total costs of debt service, and operation and maintenance costs of the POTW (including, but not limited to, replacement costs) and shall make recommendations to the town council for adjustments in the schedule of charges and fees as necessary.

(c) *Surcharges.* All industrial users of the POTW are subject to industrial waste surcharges on all discharges which exceed the following levels:

Parameter	*Levels (mg/l)*
CBOD	250
TSS	250
TN	40
Total Phosphorus	7
Ammonia nitrogen	25

The surcharge shall be based upon the mass emission rate (in pounds per day) discharged above the levels listed above. The amount charged per pound of excess shall be set forth in the schedule of charges and fees. The imposition or payment of the surcharge shall in no way be construed to constitute an authorization for the user to discharge in excess of the levels set forth above, nor shall it be construed to constitute a waiver of the town's right to strictly enforce the provisions of this division.

(d) *Charge and surcharge determination.* The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:

(1) Metered water consumption as shown in the records of meter readings maintained by the town; or

(2) If required by the director, or if desired by the user with the consent of the director, other flow measuring devices ("alternate metering devices") which measure the actual volume of wastewater discharged to the sewer. Such "alternate metering devices" shall be accessible and safely located, and shall be installed in accordance with plans approved by the town. The alternate metering device shall be installed and maintained at the user's expense according to arrangements that may be made with the town. Certified calibration of the metering device shall be required at least every three months. More frequent calibrations may be required by the director.

(3) Where any user procures all or part of the user's water supply from sources other than the town, the user shall install and maintain at the user's own expense a flow measuring device of a type approved by the town.

(e) *Surcharge sampling.* The character and concentration of wastewater used in determining surcharges shall be determined by samples collected and analyzed by the town or by state-certified contract laboratory personnel performing permitted self-monitoring activities. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR 136 by a state-certified laboratory.

(f) *Determination binding.* The determination by the director of the character and concentration the constituents of wastewater discharged shall be binding on the user as a basis for all charges and surcharges.

(g) *Pretreatment program administration charges.* The schedule of charges and fees adopted by the town may include charges and fees for:

(1) Reimbursement of costs of setting up and operating the pretreatment program;

(2) Monitoring, inspections and surveillance procedures;

(3) Reviewing slug control plans, including accidental and slug load discharge procedures and construction plans and specifications;

(4) Permitting; and

(5) Other fees as the town may deem necessary to carry out the requirements of the pretreatment program.

The schedule of charges and fees will be set forth in the town's annual budget ordinance.
(Code 1982, § 19-92; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 05-005, 3-10-2005; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-175. Wastewater discharge permit, application and issuance.

(a) *Wastewater dischargers.* It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the director. When requested by the director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the director's request. The director is authorized to prepare a form for this purpose and may periodically require users to update this information.

(b) *Permits.* All significant industrial users shall obtain a significant industrial user wastewater discharge permit ("significant industrial user permit" or "SIU permit") prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the director's determination. Industrial users who do not fit the significant industrial user criteria may, at the discretion of the director, be required to obtain a wastewater discharge permit for nonsignificant industrial users (non-SIU permit). Both SIU permits and non-SIU permits are referred to as wastewater discharge permits or permits.

(1) *Significant industrial user determination.* All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater, shall request from the director a significant industrial user

determination. If the director determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that the user file a SIU permit application.

(2) *Application.* Users required to obtain a wastewater discharge permit, including a SIU permit, shall complete and file with the town an application in the form prescribed by the director, which shall be accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Users required to renew a wastewater discharge permit shall renew such permit in accordance with the procedures for renewal described in the permit. Significant industrial users shall apply for a SIU permit within 90 days of receiving notification of the director's determination in (b)(1) above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

a. Name, address, and location (if different from the address);

b. Standard industrial classification (SIC) codes or expected classification for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;

c. Types and concentrations or mass of pollutants contained in the discharge including, but not limited to, those mentioned in section 36-173 of this division and any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a state-certified analytical laboratory, and any other pollutant of concern to the POTW. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and as contained in 40 CFR, 136, as amended; and as required in section 36-176(k) and (l)(i)-(iii) of this division.

d. Time and duration of discharge;

e. Average daily and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any;

f. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow, and appurtenances by the size, location and elevation and discharge points or locations;

g. Description of activities, facilities and plant processes on the premises, including all materials which are, or could be, discharged;

h. Where known, the nature and concentration or mass of any pollutants in the discharge which are limited by any town, state, or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;

i. If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional

pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months;

2. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a written progress report to the director which shall include, at a minimum, a statement as to whether or not the user complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between progress reports to the director;

j. Each product produced or services performed by type, amount, process or processes and rate of production;

k. Type and amount of raw materials processed (average and maximum per day) or stored;

l. Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;

m. If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15 NCAC 2H.0908(a), as outlined in section 36-176 of this division;

n. Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);

o. Description of existing on-site pretreatment facilities; if applicable, including operation and practices performed; and

p. Any other information as may be deemed by the director to be necessary to evaluate the permit application.

(3) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current representative of the user on file with the Town of Cary as defined in section 36-172; "Authorized Representative User" and must contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(4) *Application review and evaluation.*

a. The director is authorized to accept applications for the town and may refer all applications to the POTW staff for review and evaluation.

b. Within 60 days of receipt, the director shall acknowledge and accept the complete application, or if the application is not complete, the director shall return the application to the applicant with a statement as to what additional information is required.

(5) *Tentative determination and draft permit.*

a. The POTW staff shall review the application and shall conduct an on-site inspection of the significant industrial user, including any pretreatment facility. An on-site inspection of other users, including pretreatment facilities, may also be conducted. The POTW staff shall prepare a written evaluation and tentative determination to issue or deny the wastewater discharge permit.

b. If the staff's tentative determination in subsection (5)a. above is to issue the permit, the following additional determinations shall be made in writing:

1. Proposed discharge limitations for those pollutants proposed to be limited;

2. A proposed schedule of compliance, including interim dates and requirements for meeting the proposed limitations; and

3. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

c. The POTW staff shall organize the determinations made pursuant to paragraphs (5)a. and (5)b. above, along with the town's general permit conditions, into a wastewater discharge permit.

(6) *Permit supporting documentation.* The control authority staff shall prepare the following documents for all significant industrial user permits.

a. An allocation table (AT) listing permit information for all significant industrial users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.

b. The basis, or rationale, for the pretreatment limitations, including the following:

1. Documentation of categorical determinations, including documentation of any calculations used in applying categorical pretreatment standards, and;

2. Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

(7) *Final action on applications.*

a. The director shall take final action on all applications and shall notify the applicants of the action taken not later than 90 days following receipt of a complete application.

b. The director is authorized to take any one or more of the following actions:

1. Issue a wastewater discharge permit containing such conditions as are necessary to effectuate the purposes of this division and G.S. 143-215.1;

2. Issue a wastewater discharge permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;

3. Modify any permit upon not less than 60 days' notice and in accordance with section 36-175 of this division;

4. Revoke any permit pursuant to section 36-179 of this division;

5. Suspend a permit pursuant to section 36-179 of this division;

6. Deny a permit application when, in the opinion of the director, such a discharge may cause or contribute to pass-through or interference or where necessary to effectuate the purposes of G.S. 143-215.1.

(8) *Permit modification.*

a. *Procedural requirements.* Modifications of permits shall be subject to the same procedural requirements as the issuance of permits, except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance attainment.

1. Changes in the ownership of the discharge when no other change in the permit is indicated.

2. A single modification of any compliance schedule not in excess of four months.

3. Modification of compliance schedules in permits for new source's construction schedules where the new source will not begin to discharge until the discharge characteristics can meet the requirements of this division.

b. *Categorical standards revisions.* Within nine months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user subject to a National Categorical Pretreatment Standard has not previously submitted an application for a wastewater discharge permit as required by subsection (b), the user shall apply for a wastewater discharge permit within 180 days of the promulgation of the applicable National Categorical Pretreatment Standard.

c. *User request for modification.* A request for a modification by the user shall constitute a waiver of the 60-day notice for modifications required by G.S. 143-215.1(b).

(9) *Permit conditions.*

a. The director shall have the authority to grant a permit with such conditions attached as the director believes necessary to achieve the purpose of this division and G.S. 143-215.1. Permit conditions shall include the following:

1. A statement of duration (in no case more than five years);

2. A statement of nontransferability;

3. Applicable effluent limits based on categorical standards or local limits, or both;

4. Applicable monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling locations, sampling frequency, and sampling type based on federal, state, and local law;

5. Notification requirements for slug loads or accidental discharge as identified in section 36-172(a), "Definitions - Slug Load or Discharge";

6. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule;

7. Requirements to implement a Plan or other controls for prevention of accidental discharges or slug load as defined in section 36-172(a) "Definitions - Slug Load or Discharge", if determined by the director to be necessary for the user, and

8. Requirements for immediately notifying the director of any changes at its facility affecting the potential for spills and other accidental discharges or slug load as defined in section 36-172(a) "Definitions - Slug Load or Discharge". Also see section 36-176(e), (f).

b. In addition, at the discretion of the director, wastewater discharge permits may contain other conditions which may include, but are not limited to, the following:

1. Limits on the average and maximum rate of discharge, and requirements for flow regulation and equalization;

2. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;

3. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, and similar requirements designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;

4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

6. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system;

7. Requirements for installation and maintenance of inspection and sampling facilities and equipment;

8. Specifications for a monitoring program which may include sampling locations, sampling frequency, number, types, and standards for tests, and reporting schedules;

9. Requirements for immediate reporting of any instance of noncompliance and for automatic and resampling and reporting within 30 days, where self-monitoring indicates a violation(s);

10. Compliance schedules for meeting pretreatment standards and requirements;

11. Requirements for submission of periodic self-monitoring of special notification reports;

12. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 36-176(m)[n] and affording the director or his representatives, access thereto;

13. Requirements for prior notification and approval by the director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction into the POTW;

14. Requirements for the prior notification and approval by the director of any change in the manufacturing and/or pretreatment process used by the permittee;

15. Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the POTW;

16. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective after the issuance of the permit; and

17. Other conditions as deemed appropriate by the director to ensure compliance with this division, and state and federal laws, rules, and regulations.

(10) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period of time that is less than a year and may be drafted to expire on a specific date.

(11) *Permit transfer.* Wastewater discharge permits shall be issued to a specific user for a specific operation. A wastewater discharge permit shall not be assigned or transferred or sold to any person, including a new owner or new user, nor shall it be assigned or transferred to a different premises, or to a new or changed operation.

(12) *Permit reissuance.* A user shall apply for permit reissuance by submitting a complete permit application in accordance with subsection (b) at least 90 days prior to the expiration of the existing permit.

(Code 1982, § 19-93; Ord. No. 94-036, 12-8-1994; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-176. Reporting requirements.

(a) *Baseline monitoring reports.*

(1) Within 180 days after either the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, users subject to a categorical pretreatment standard who are currently discharging to, or scheduled to discharge to, the POTW shall submit to the director a report which contains the information listed in subsection (a)(2) a. through h. below. At least 90 days prior to commencement of their discharge, new sources, and sources that become subject to categorical pretreatment standards subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection (a)(2)a. through h. below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(2) Users described above shall submit the information set forth below:

a. *Identifying information.* The name and address of the facility, including the name of the operator and owner.

b. *Environmental permits.* A list of any environmental control permits held by or for the facility.

c. *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

d. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

e. *Measurement of pollutants.*

1. The categorical pretreatment standards applicable to each regulated process.

2. The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process, where required by the standard or by the director. Instantaneous, daily maximum, and long-term average concentrations or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in subsection (j) of this section.

3. Sampling must be performed in accordance with procedures set out in subsection (l) of this section and 40 CFR 403.12(b)and(g), including 40 CFR 403.12(g)(4).

f. *Certification.* A statement, reviewed by the user's current authorized representative as defined in section 36-172, Definitions: "Authorized Representative User" and certified by a licensed professional engineer, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection (b) of this section.

h. *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with section 36-175(b)(3) of this division.

(b) *Compliance schedule progress reports.* The following conditions shall apply to the compliance schedule required by section 36-176(a)(2)g.:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment

standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No progress increment referred to above shall exceed nine months;

(3) The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance, including in such report, at a minimum, statements as to whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine months elapse between such progress reports to the director.

(c) *Reports on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsection (a)(2)d. through f. of this section. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 36-175(b)(3).

(d) *Periodic compliance reports.*

(1) All users required to obtain a wastewater discharge permit shall, at a frequency determined by the director but for SIU's in no case less than once every six months, submit a report to the director indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in section 36-176(k) and (l) of this ordinance. All periodic compliance reports must be signed and certified in accordance with section 36-175(3) of this ordinance.

(2) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring and flow measurement facility in good working order shall not be grounds for the user to claim that sample results are not representative of its discharge.

(3) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in subsection (j) of this section, the results of this monitoring shall be included in the report.

(e) *Reports of changed conditions.* Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 45 days before the change. The permittee shall not begin the changes until receiving written approval from the control authority and/or the POTW, if different than the control authority. See section 36-176(a)(2)f.4. for other reporting requirements.

(1) The director may require the user to submit such information as the director may deem necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 36-175(b).

(2) The director may issue a wastewater discharge permit under section 36-175(b) or modify an existing wastewater discharge permit under section 36-175(b) in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent (20%) or greater, and the discharge of any previously unreported pollutants; increases or decreases in production; discharge of pollutants not previously reported to the control authority and/or POTW; new or changed product lines; new or changed manufacturing processes; or new or changed chemicals used or stored.

(f) *Reports of potential problems.*

(1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load as defined in section 36-172: Definitions, "Slug Load or Discharge" that may cause potential problems for the POTW, the user shall immediately notify the director by telephone of the discharge. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(2) Within five days following such discharge, the user shall, unless the user receives a written waiver from the director, submit a detailed written report describing the cause(s) of the discharge and the measures taken, or to be taken, by the user to prevent future similar occurrences. Such notification shall not relieve the user of any liability for any expense, loss, damage, personal injury, or other claim which may be suffered or incurred as a result of damage to the POTW, damage to natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this division.

(3) A notice shall be permanently posted on the user's bulletin board or some other prominent place advising employees of whom to call in the event of a discharge described in subsection (f)(1) above. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.

(4) All SIUs are required to notify the director immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch, or slug load as defined in section 36-172 Definitions: "Slug Load of Discharge".

(g) *Reports from unpermitted users.* All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require. All users classified as non-significant categorical industrial users under section 36-187 of this division shall provide appropriate reports to the director as the director may require. At a minimum this shall include the annual certification of continuing to meet the non-significant categorical industrial user criteria as required under 40 CFR 403.12(q).

(h) *Notice of violation/repeat sampling and reporting.* If sampling performed by a user indicates noncompliance or any other violation, the user must notify the director within 24 hours of becoming aware of the violation. The user shall also immediately repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. If allowed by the director, the user is not required to resample:

1. If the director monitors at the user's facility at least once a month,

2. If the director samples between the user's initial sampling and the time when the user receives the results of this sampling.

(i) *Control authority repeat sampling in lieu of permittee self-monitoring.* If the director does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

1. The director monitors at the user's facility at least once a month; or

2. The director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or

3. The director requires the user to perform sampling and submit the results to the director with the 30 day deadline of the POTW becoming aware of the violation.

(j) *Notification of discharge of hazardous waste.*

(1) If a user wishes to commence discharge of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, such user shall not commence such discharge until written approval from the director has been received, unless such discharge is exempt under subsection (j)(2) below. To obtain such approval, the user shall notify the director, the EPA regional waste management division director, and state hazardous waste authorities, in writing, of the desired discharge, and make application to the director for approval of such discharge. Such notification must include the name of the hazardous waste, as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other) proposed. If the user desires to discharge more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information, to the extent such information is known and readily available to the user:

a. An identification of the hazardous constituents contained in the wastes;

b. An estimation of the mass and concentration of such constituents in the wastestream discharge during the first calendar month; and

c. An estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months.

All notifications and applications must be submitted to the director for his review and assessment at least 180 days prior to the date the user desires to commence the discharge. The user shall not begin the discharge until receiving written approval from the director. The notification and application under this paragraph need be submitted only once for each hazardous waste discharge; however, notifications of changed conditions must be submitted under subsection (e) of this section. The notification and director approval requirement in this section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of subsections (a), (c), and (d) of this section.

(2) Users are exempt from the requirements of subsection (j)(1) above for discharges that contain 15 kilograms or less of hazardous wastes, unless the wastes are acute hazardous wastes, as specified in 40 CFR 261.30(d) and 261.33(e). The discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or the discharge of any quantity of acute hazardous wastes, as specified in 40 CFR 261.30(d) and 261.33(e), requires the prior written approval of the director.

(3) In the case of any new regulation under section 3001 of the RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the director, the EPA regional waste management waste division director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification and application made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This subsection does not create a right to discharge any substance not otherwise permitted to be discharged by this division, a permit issued thereunder, or any applicable federal or state law.

(k) *Analytical requirements.* All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR 136, unless otherwise specified in an applicable categorical pretreatment standard or otherwise performed in accordance with procedures approved by EPA or the director. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA and the director.

(l) *Grab and composite sample collection.*

(i) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(ii) Grab samples must be used for temperature, pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the user's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the [POTW director] may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.

(iii) Composite samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the [POTW director]. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

(m) *Timing.* Written reports to the director shall be deemed to have been submitted on the date postmarked. For reports which are not deposited, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report by the director shall govern.

(n) *Recordkeeping.* Users subject to the reporting requirements of this division shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this division and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include:

(1) The date, exact place, method, and time of sampling;

(2) The name of the person(s) taking the samples;

(3) The dates analyses were performed;

(4) Identification of the person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the town, or where the user has been specifically notified of a longer retention period by the director.

(o) *Electronic reporting.* The director may develop procedures for receipt of electronic reports for any reporting requirements of this ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under section 36-179.

(p) *Special reporting requirements for industrial users in satellite POTWs.* In the case of industrial users located in satellite POTW organization's jurisdiction, all information required to be reported to the industrial user's pretreatment program control authority shall be reported to the POTW treatment plant organization.
(Code 1982, § 19-94; Ord. No. 94-036, 12-8-1994; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-177. Compliance monitoring.

(a) *Monitoring facilities.* The user shall provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the town may, when such a location would be impractical or cause undue hardship for the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

(1) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(2) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the town's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the town.

(3) The director may designate a minimum frequency for calibration of monitoring equipment; however, the user is responsible for ensuring the accuracy of the equipment at all times.

(b) *Inspection and sampling.* The town may inspect the facilities of any user to ascertain whether the purposes of this division are being met and whether all requirements of the division, and permits and orders issued hereunder, are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the town, approval authority and EPA, or their representatives, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, or for the performance of any of their duties. Such access shall be given to the town, approval authority and EPA Monday through Friday during regular business hours and at all other times the user is discharging to the POTW. The town, approval authority and EPA shall have the right to set up, on the user's property, such devices as are necessary to conduct sampling inspection, compliance monitoring and metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into the user's premises, the user shall make necessary arrangements with their security guards so that, upon presentation of suitable identification, personnel from the town, approval authority and EPA shall be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the town’s, approval authority's, or EPA's access to the user's premises shall be a violation of this division. Unreasonable delays in permitting entry may constitute denial of access.

(c) *Search warrants/administrative inspection warrants.* If the town, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this division, or that there is a need to inspect or sample as part of a routine inspection and sampling program of the town designed to verify compliance with this division or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the town, approval authority, or EPA may seek issuance of a search warrant or administrative inspection warrant from a magistrate, clerk of court, district court judge or superior court judge in the county.
(Code 1982, § 19-95; Ord. No. 94-036, 12-8-1994; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-178. Confidential information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits, reports and monitoring programs, and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests, and is able to demonstrate to the satisfaction of the director, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted by the user at the time of, or prior to, initial submission of the information or data to the director.

(b) When timely requested by the person furnishing a report, the portions of a report which might disclose trade secrets shall not be made available for inspection by the public, but shall be made available to governmental agencies, upon their written request, for uses related to this division, the national pollutant discharge elimination system (NPDES) permit, nondischarge permit and/or pretreatment programs. The alleged trade secret portions of a report shall also be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics shall not be recognized as trade secrets.

(c) All records relating to compliance with pretreatment standards and requirements shall be made available to officials of the approval authority and EPA, upon request.
(Code 1982, § 19-96; Ord. No. 94-036, 12-8-1994; Ord. No. 2011-Code-09, 12-15-2011)

State law reference—Trade secrets not public records, G.S. 132-1.2.

Sec. 36-179. Enforcement.

(a) *Administrative remedies.*

(1) *Notification of violation.* Whenever the director finds that any person has violated or is violating this division, a wastewater discharge permit, or any prohibition, limitation or requirement contained therein, the director may serve upon such person a written notice stating the nature of the violation ("notice of violation"). Within 30 days of the date of the notice of violation, a plan for the satisfactory correction of the violation shall be submitted to the town by the person. Submission of this plan does not relieve the person of liability for any violations occurring before or after receipt of the notice of violation.

(2) *Consent orders.* The director is hereby authorized and empowered to enter into consent orders, assurances of voluntary compliance, or other similar agreements with any person

responsible for violation of, or noncompliance with, this division or a permit issued hereunder (hereafter referred to as noncompliance). Such orders shall specify action to be taken by the person to correct the noncompliance within a time period that shall be specified in the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to subsection 36-179(a)(4) below.

(3) *Show cause hearing.* The director may order any user who causes or is responsible for an unauthorized discharge, who has violated this division or is in noncompliance with a wastewater discharge permit, to show cause why a proposed enforcement action should not be taken. In the event the director determines that a show cause order should be issued, a notice that substantially notifies the user of the specific time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken shall be issued by the director ("show cause hearing notice"). The show cause hearing notice shall be served on the user at least ten days before the hearing. Service may be made on any agent or officer of a corporation. The director shall review the evidence presented at the hearing and shall determine whether the proposed enforcement action is appropriate. A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section 36-179(b), nor is any action or inaction taken by the director under this section subject to an administrative appeal under section 36-188.

(4) *Administrative orders.* When the director, or his duly authorized representative, finds that a user has violated or continues to violate this division, the prohibitions or discharge limitations of this division, or those contained in any wastewater discharge permit or order issued hereunder, the director, or his duly authorized representative, may issue an order to cease and desist, and direct those persons in noncompliance to do any of the following:

a. Immediately comply with all requirements;

b. Comply in accordance with a compliance time schedule set forth in the order;

c. Take appropriate remedial or preventative action in the event of a continuing or threatened violation;

d. Disconnect from the POTW, or cease discharging into the POTW, unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(5) *Emergency suspensions.* The director, or his duly authorized representative, may suspend wastewater treatment service and/or the wastewater discharge permit when the director believes suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW, or causes the POTW to violate any condition of its NPDES permit. Any user notified of a suspension of their wastewater treatment service and/or their wastewater discharge permit shall immediately stop or eliminate the discharge. A hearing shall be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's wastewater discharge permit terminated. In the event of a failure of the person to comply voluntarily with the

suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any person or property. The director shall reinstate the wastewater discharge permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge and the payment of all user charges, surcharges, penalties and other costs assessed hereunder. The user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the director prior to the date of the above-described hearing.

(6) *Termination of permit or permission to discharge.* Any user who violates any condition of this division, or applicable state or federal regulations, is subject to having its permit terminated. The director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

a. Failure to factually and accurately report the wastewater constituents and characteristics of the user's discharge;

b. Failure to report significant changes in operations, or wastewater constituents and characteristics;

c. Refusal to allow reasonable access to the user's premises to the director, approval authority, or EPA for the purpose of inspection or monitoring; or

d. Violation of conditions of the wastewater discharge permit or permission to discharge, conditions of this ordinance, or any applicable state or federal regulations.

Noncompliant users shall be notified of the proposed termination of their wastewater discharge permit and will be offered an opportunity to show cause under this subsection (a) why the proposed action should not be taken.

(b) *Civil penalties.* Any user who is found to have failed to comply with any provision of this division, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty by the director up to $25,000.00 per day per violation. Penalties between $10,000.00 and $25,000.00 per day per violation may be assessed against a violator only if:

i. For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or

ii. In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this ordinance, or the orders, rules, regulations and permits issued hereunder, only if the POTW director determines that the violation was intentional and a civil penalty has been imposed against the violator with the five years preceding the violation.

Such assessments may be added to the user's next scheduled sewer service charges and the POTW, in addition to all other remedies, shall have such remedies for the collection of such assessments as it has for collection of other service charges.

(c) *Penalty determination.* In determining the amount of the civil penalty, the director shall consider the following:

(1) The degree and extent of the harm to natural resources, the public health, or to public or private property resulting from the violation;

(2) The duration and gravity of the violation;

(3) The effect on ground or surface water quantity or quality or on air quality;

(4) The cost of rectifying the damage;

(5) The amount of money the user saved by noncompliance;

(6) Whether the violation was committed willfully or intentionally;

(7) The prior record of the violator in complying or failing to comply with the pretreatment program;

(8) Other fines and penalties assessed to user for previous violations; and

(9) The costs of enforcement to the town.

(d) *Other available remedies.* Remedies, in addition to those previously mentioned in this division, are available to the director who may use any single one or combination thereof against a noncompliant person or user. Additional available remedies include, but are not limited to:

(1) *Criminal violations.* The district attorney for the 10th Judicial District (the judicial district encompassing the county) may, at the request of the town, prosecute noncompliant persons and users who violate the provisions of G.S. 143-215.6B.

(2) *Injunctive relief.* Whenever a user is in violation of the provisions of this division or an order or permit issued hereunder, the director, through the town attorney, may petition the county superior court for the issuance of a restraining order or a preliminary and permanent injunction, which restrains or compels the activities in question.

(3) *Water supply severance.* Whenever a user or person is in violation of the provisions of this division or an order or permit issued hereunder, water service to the user or person may be severed and service will only recommence, at the user's or person's expense, after it has satisfactorily demonstrated ability to comply.

(4) *Public nuisances.* Any violation of the prohibitions or discharge limitations of this division, or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person(s) creating a public nuisance shall be subject to the provisions of the Code of Ordinances of the Town of Cary governing such nuisances, including reimbursing the town for any costs incurred in removing, abating or remedying such nuisance.

(5) *Remedies nonexclusive.* The remedies provided for in this division are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant user or other person. Enforcement of pretreatment violations will generally be in accordance with the town's enforcement response plan; however, the director may take other action against any user or other person when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant user of the POTW and sewer collection system.

(Code 1982, § 19-97; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-180. Annual publication of significant noncompliance.

At least annually, the director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Code 1982, § 19-98; Ord. No. 94-036, 12-8-1994; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-181. Affirmative defenses to discharge violations.

(a) *Upset.*

(1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (2) below, are met.

(2) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and the user can identify the cause(s) of the upset;

b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and

c. The user has submitted the following information to the director within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

1. A description of the discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(3) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(b) *Prohibited discharge standards defense.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 36-173(1) of this division or the specific prohibitions in section 36-173(2)(b), (c), and (e-g) of this division if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:

(1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass-through or interference; or

(2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the town was regularly in compliance with its NPDES permit, and, in the case of interference, was in compliance with applicable residual solids use or disposal requirements.

(c) *Bypass.*

(1) *Allowance.* A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (2) and (3) of this subsection.

(2) *Notice.* Notice of a bypass shall be provided as follows:

a. If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten days before the date of the bypass, if possible.

b. A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours of the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(3) *Prohibited except in certain cases.*

a. Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

3. The user submitted notices as required under subsection (2) of this subsection.

b. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subsection (c)(3)a.1. through 3. of this section.

(Code 1982, § 19-99; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-182. Notices.

(a) Unless specifically provided otherwise, any notice required or permitted to be given by the director or the town pursuant to this division shall be deemed to have been properly given on the date it is deposited in the U.S. mail, postage prepaid, and addressed to the user or applicant at the address shown on any application, permit, bill, or other information available to the director.

(b) Unless specifically provided otherwise, any notice required or permitted to be given by a user or applicant shall be deemed to have been properly given when received by the director.

(c) Unless specifically provided otherwise, any notice or communication required or permitted to be served pursuant to this division shall be deemed to have been properly served if personally delivered to or served upon the user or applicant; or, if mailed registered or certified mail, return receipt requested, and delivered to the user or applicant; or by any other method of service set forth in Rule 4 of the North Carolina Rules of Civil Procedure.

(Code 1982, § 19-100; Ord. No. 94-036, 12-8-1994; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-183. Fat, oil, and grease control.

(a) *Scope and purpose.* The objective of this section is to aid in preventing the introduction and accumulation of fats, oils, and greases into the municipal wastewater system which will or tend to cause or contribute to sanitary sewer blockages and obstructions. Food service establishments and other industrial or commercial establishments generating wastewater containing fats, oils or greases are subject to this section. This section regulates such users by requiring that grease interceptors and other approved strategies be installed, implemented, and maintained in accordance with the provisions hereof.

(b) *Definitions.* The definitions contained in section 36-172 and the following terms, when used in this section, shall apply.

Action level means the concentration based numeric value that the grease interceptor effluent, at the device's outlet tee and prior to mixing with any other waste water from the contributing establishment's property, are expected to achieve on a consistent or stipulated basis.

Common interceptor means one or more interceptors receiving FOG laden wastewater from more than one establishment. Common interceptors may be located at shopping centers, malls, entertainment complexes, sporting arenas, hotels, multi-tenant "flex" spaces, mixed use spaces, and other sites where multiple establishments are connected to a single grease interceptor. The owner of the property on which the common grease interceptor is located shall be primarily responsible for the maintenance, upkeep, and repair of the common interceptor.

Fats, oils, and greases means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases" or "FOG".

Food service establishments or *"FSE"* means those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities: Cooking by frying (all methods), baking (all methods), grilling, sauteing, rotisserie cooking, broiling (all methods), boiling blanching, roasting, toasting, or poaching, and infrared heating, searing, barbecuing, and any other food preparation or serving activity that produces a consumable food product in or on a receptacle requiring washing to be reused.

FOG enforcement response plan means the document and written plan and procedures by which the director implements an enforcement strategy applicable to the FOG control and management program established herein. The plan applies to FOG program violations and matters of program noncompliance. Stipulated penalties for specific and programmatic infractions are addressed in the plan and set forth in the town's annual budget ordinance. The director shall make site and case specific determinations of program non-conformance in accordance with this Division 2.

Grease trap or *interceptor* means a device for separating waterborne greases and grease complexes from wastewater and retaining such greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps also serve to collect solids that settle, generated by and from activities that subject users to this section, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps and interceptors are sometimes referred to herein as "grease interceptors".

Minimum design capability means the design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases and settled solids from grease-laden wastewaters discharged to the public sanitary sewer.

Noncooking establishments means those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking, but that may produce a consumable food product in or on a receptacle requiring washing to be reused.

On-site grease interceptor treatment (sometimes "onsite treatment") means mechanisms or procedures utilized by a user to treat grease interceptor contents on the user's site, followed by the reintroduction of such treated wastewater back into the interceptor. On-site grease interceptor treatment may only be accomplished by a user if the user or the user's contract service provider is permitted by the NC Division of Waste Management as a septage management firm or service provider.

Program acknowledgement certificate means program confirmation documentation issued by the director. The user is required to keep program acknowledgement certificate on premises and produce it upon request of Town of Cary.

Service provider means any third party not in the employment of the user that performs maintenance, repair, and other services on a user's grease interceptor at the user's directive.

User is as defined in section 36-172 for the purpose of this section. Users include property owners who provide common interceptors for one or more independent establishments, including tenants.

(c) *Grease interceptor installation, maintenance, recordkeeping, and grease removal.*

(1) Grease interceptors shall be installed and maintained at the user's expense, when a User operates a food service establishment. Grease interceptors may be required in noncooking or cold dairy and frozen foodstuffs establishments and other industrial or commercial establishments when the establishment generates wastewater containing fat or grease and the director determines an interceptor is necessary to prevent contribution or accumulation of grease to the sanitary sewer collection and treatment system. Upon notification by the director or designee that the user is subject to the terms of an enforcement action, as stipulated in the FOG enforcement response plan, said user shall not allow wastewater discharge concentration from subject grease interceptor to exceed an establishment action level of 200 milligrams per liter, expressed as hexane extractable material. All grease interceptors shall be of a type, design, and capacity approved by the director and shall be readily and easily accessible for maintenance and repair, including cleaning and for town inspection. All grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every 60 days or as permitted in a valid program modification. Users who are required to pass wastewater through a grease interceptor shall:

a. Provide for a minimum hydraulic retention time of 24 minutes at actual peak flow between the influent and effluent baffles, with 25 percent of the total volume of the grease interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease-derived materials to rise and accumulate, identified hereafter as a solids blanket and grease cap respectively.

b. Remove any accumulated grease cap and solids blanket as required, but at intervals of not longer than 60 days at the user's expense, or in accordance with a valid program modification or other director's requirements. Grease interceptors shall be kept free of inorganic solid materials, such as grit, rocks, gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which could settle into this solids blanket and thereby reduce the effective volume of the grease interceptor.

c. If the user performs on-site grease interceptor treatment pursuant to a modification granted under subsection 36-183(g)(5) below, user shall:

1. Prior to commencement of onsite treatment obtain written approval by and from the director of all processes utilized in said onsite treatment.

2. If any pumped wastes or other materials removed from the grease interceptor are treated in any fashion on-site and reintroduced back into the grease interceptor as an activity of and after such on-site treatment, the user shall meet the criteria contained in (c)(1)c.3. below.

3. Attain and adhere to the criteria listed below:

a. After 30 minutes of settling time, not more than 3.0 ml/L of settlable solids, as measured in a one liter Imhoff cone shall be allowed, and;

b. Within and not more than 24 hours after onsite grease interceptor servicing, not more than two inches of settlable solids and/or grease shall be allowed to have accumulated therein as a result of said operations.

c. Service vehicles and equipment used in onsite grease interceptor servicing shall be registered with the utilities department, and as required by the North Carolina Division of Waste Management.

d. When servicing grease interceptors service vehicles and equipment shall have onboard, at all times, a certificate of approval for the operations and methods used, issued by the director.

e. Any tanks, tankage, or vessel(s) associated with a modification shall be empty upon arrival at the initial FSE user site for which this modification is intended to be applied.

d. Operate and maintain the grease interceptor to achieve and consistently maintain any applicable grease action level. "Consistent" shall mean any wastewater sample taken from such grease interceptor must meet the terms of numerical limit attainment described in subsection (c)(1). If a user documents that conditions exist ("space constraints") on their establishment site that limit the ability to locate a grease interceptor on the exterior of the establishment, the user may request an interior location for the interceptor. Such request shall contain the following information:

1. Location of town sewer main and easement in relation to available exterior space outside building.

2. Existing plumbing layout at or in a site.

3. A statement of understanding, signed by the user or authorized agent, acknowledging and accepting conditions director may place on permitting an identified interior location. Conditions may include requirements to use alternative mechanisms, devices, procedures, or operations relative to an interior location.

4. Such other information as may be required by the director.

e. The use of biological or other additives as a grease degradation or conditioning agent is permissible only upon prior written approval of the director. Any user using biological or other additives shall maintain the trap or interceptor in such a manner that attainment of any grease wastewater, action level, solids blanket or grease cap criteria, goal or directive, as measured from the grease interceptor outlet or interior, is consistently achieved.

f. The use of automatic grease removal systems is permissible only upon prior written approval of the director, the lead plumbing inspector of the town, and the Wake County Department of Environmental Services or the US Department of Agriculture. Any user using a grease interceptor located on the interior of the site shall be subject to any operational requirements set forth by the North Carolina Division of Waste Management. Any user using this equipment shall operate the system in such a manner that attainment of the grease wastewater discharge limit, as measured from the unit's outlet, is consistently achieved as required by the director.

g. The director may make determinations of grease interceptor adequacy need, design, appropriateness, application, location, modification(s), and conditional usage based on review of all relevant information regarding grease interceptor performance, facility site and building plan review by all regulatory reviewing agencies and may require repairs to, or modification or replacement of grease interceptors.

(2) The user shall maintain a written record of grease interceptor maintenance for three years. All such records will be available for inspection by the town at all times. These records shall include:

a. FSE name and physical location;

b. Date of grease interceptor service;

c. Time of grease interceptor service;

d. Name of grease interceptor service company;

e. Name and signature of grease interceptor service company agent performing said service;

f. Established service frequency and type of service: full pumpout, partial pumpout, on-site treatment (type of nature of operations);

g. Number and size of each grease interceptor serviced at FSE location;

h. Approximated amount, per best professional judgement of contract service provider, of grease and solids removed from each grease interceptor;

i. Total volume of waste removed from each grease interceptor;

j. Destination of removed wastes, food solids, and wastewater disposal;

k. Signature and date of FSE personnel confirming service completion;

l. Such other information as required by director.

(3) No nongrease-laden sources are allowed to be connected to sewer lines intended for grease interceptor service.

(4) Access manholes shall have an installed diameter of 24 inches, a maximum weight of 50 pounds, and shall be provided over each chamber, interior baffle wall, and each sanitary tee. The access penetrations, commonly referred to as "risers" into the grease interceptor shall also be, at a minimum, 24 inches in diameter. The access manholes shall extend at least to finished grade and be designed and maintained to prevent water inflow or infiltration. The manholes shall also have readily removable covers to facilitate inspection, grease removal, and wastewater sampling activities.

(5) A user may request a modification to the following requirements of this section. Such request for a modification shall be in writing and shall provide the information set forth below.

a. The user's grease interceptor pumping frequency. The director may modify the 60-day grease interceptor pump out frequency when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate and such can be substantiated by the director. Proposed alternatives may include: Grease interceptor pumping or maintenance matters, bioremediation as a complement to grease interceptor maintenance, grease interceptor selection and sizing criteria, onsite grease interceptor maintenance, and specialized ware washing procedures.

b. Grease interceptor maintenance and service procedures. The director may modify the method(s) or procedure(s) utilized service a grease interceptor when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate method or procedure and such can be substantiated by the director. If a modification to maintenance and service procedures is permitted it shall be a conditional discharged permit approval.

c. Any modification must be approved by the director in written form before implementation by the user or the user's designated service provider. The user shall pay modification fees as set forth in the budget ordinance fee schedule.

(Code 1982, § 19-104; Ord. No. 98-021, 12-10-1998; Ord. No. 06-014, 8-10-2006; Ord. No. 2011-Code-09, 12-15-2011; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-184. Severability.

If any provision, paragraph, word, section or article of this division is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

(Ord. No. 06-004, 3-9-2006; Ord. No. 06-014, 8-10-2006; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-185. Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this division are hereby repealed to the extent of such inconsistency or conflict.
(Ord. No. 06-004, 3-9-2006; Ord. No. 06-014, 8-10-2006; Ord. No. 2011-Code-09, 12-15-2011)

Sec 36-186. Amendment to certain sections of sewer use ordinance for users in Kit Creek Pump Station Service Area.

(a) At present, the Triangle Wastewater Treatment Plant ("TWWTP'), owned and operated by Durham County treats wastewater that flows to the Kit Creek Pump Station ("KCPS") pursuant to an interlocal agreement. The interlocal agreement imposes certain requirements on the town to ensure that the TWWTP meets its requirements under its NPDES permit and state and federal laws and regulations. To ensure that the town complies with its obligations under the interlocal agreement and any permits, approvals or limits issued thereunder, the following additional uniform requirements apply to users of the wastewater collection and treatment system of the town discharging wastewater to the KCPS and who are located in the KCPS Service Area. Such KCPS Service Area is delineated on Figure 1.

(b) *Industrial Waste survey and local limits.* In addition to the requirements contained in Sec. 36-173(5), users in the KCPS Service Area are subject to the following additional local limits that are more restrictive than those prescribed in Sec. 36-173(5):

Limits (mg/l)	*Pollutant*
250	BOD
0.000142	Mercury, total
0.003	Arsenic, total
0.003	Cadmium, total
0.061	Copper, total
0.021	Nickel, total
0.005	Silver, total

(c) *Prohibited discharge standards.* In addition to the requirements of Sec. 36-173(2), no users in the KCPS Service Area shall discharge wastewater into the POTW that contains, or has the characteristics of, the following:

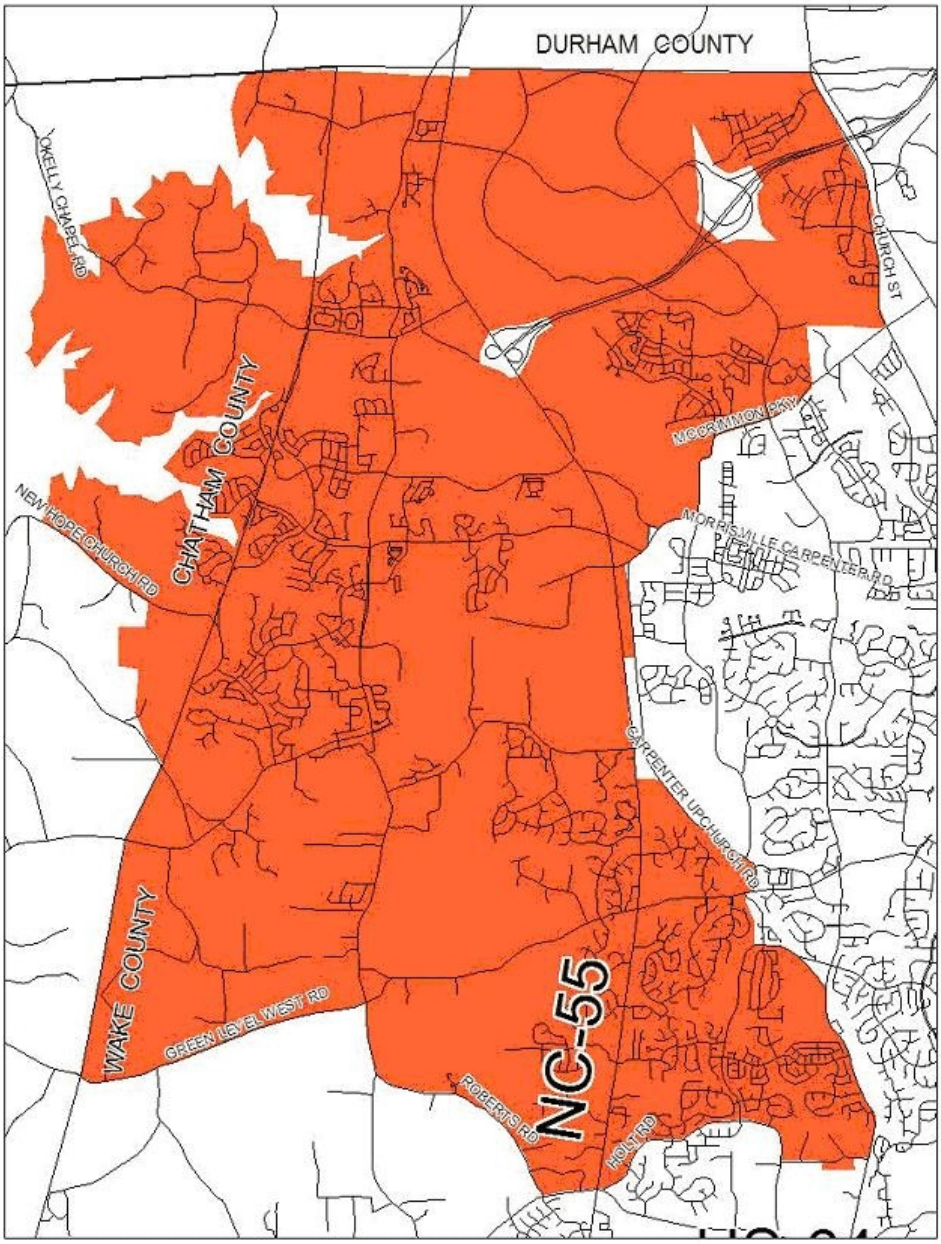
1. Any wastewater having a pH less than 5.0 or more than 9.5 or wastewater having any other corrosive property capable of causing damage to the POTW, or equipment, unless permitted to do so.

2. Any wastewater containing mercury in concentrations greater than 142 ng/L as measured by EPA test method 1631 and sampled by EPA method 1669.

(d) *Surcharges.* In addition to the requirements of Sec. 36-174(c) all industrial users in the Kit Creek Pump Station Service Area are subject to industrial waste surcharges on all discharges that exceed the following levels or as specified in the Durham County Sewer Use Ordinance, whichever is more stringent:

Parameter	*Levels (mg/L)*
BOD	>250
TSS	>180
Total Phosphorus	>5
TKN	>40

(e) All requirements of the town sewer use ordinance that are not amended by this Section 36-186 apply to users located in the KCPS Service Area.



Kit Creek Pump Station Service Area Figure 1.

(Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2009-Code-10, 8-13-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-187. Exceptions to definition of significant industrial user.

Subject to Division approval under 15A NCAC 02H .0907(b), the control authority may determine that:

(a) an industrial user meeting the criteria in part (1) and (2) of the definition of significant industrial user contained in section 36-172 of this division, has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirements, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user.

(b) an industrial user meeting the criteria in part (3) of the definition of significant industrial user contained in section 36-172 of this division meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a non-significant categorical industrial user.

(c) an industrial user meeting the criteria in parts (1), (2), or (3) of the definition of significant industrial user contained in section 36-172 of this division meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a middle tier significant industrial user. Sampling and inspection requirements may be reduced as per 40 CFR Parts 403.8(f)(2)(v)(C) and 403.12(e)(3).

(Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-188. Adjudicatory hearings.

a. *Administrative hearings.* An applicant who receives notice that an application for a permit has been denied; an applicant who receives notice that a permit has been granted subject to conditions the applicant deems unacceptable; a user who receives notice of an assessment of a civil penalty under section 36-179(b); or a user who receives notice of the issuance of an administrative order under section 36-179(a)(4) (all of whom are hereafter referred to as "aggrieved applicant or user") shall have the right, upon filing written demand, to a hearing before a hearing officer designated by the director. In the absence of a designation by the director, the hearing officer may be the town manager or assistant town manager. Such written demand for a hearing shall identify with particularity the aggrieved applicant or user contesting the action; the specific permit provisions or conditions or other issues contested; the reasons for the objection; and any alternate provisions, conditions or terms the aggrieved applicant or user proposes. The written demand for a hearing shall be filed with the director within 30 days of the date of the notice of the action that is being contested. Unless such written demand is filed within the time specified herein, the contested action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall conduct a hearing and make a final decision on the contested action within 45 days of the receipt of the written demand for a hearing. The director shall serve a copy of the hearing officer's decision (notice of the decision) on the aggrieved applicant or user in accordance with section 36-182. The decision is a final decision for the purposes of seeking judicial review. The terms and conditions of the permit under appeal shall be:

1. *New permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit shall be stayed and the permit shall not be in effect until either the conclusion of the appeals process or until the parties reach a mutually agreeable resolution.

2. *Renewed permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the old permit shall remain in effect until either the conclusion of the appeals process or until the parties reach a mutual resolution; provided, however, that if an application for a renewed permit has been denied, it shall be treated as a new permit.

3. *Terminated permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

b. *Official record.* When a decision by the hearing officer is appealed under section 36-188(c) below, the hearing officer shall prepare an official record of the case that includes:

1. All notices, motions, and other like pleadings.

2. A copy of all documentary evidence introduced.

3. A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.

4. A copy of the final decision of the hearing officer.

c. *Judicial review.* Any person against whom a final order or decision of the hearing officer is entered pursuant to the hearing conducted under section 36-188(a) above may seek judicial review of the order or decision by filing a written request within 30 days after the date of the notice of the decision, but not thereafter, with the Superior Court of Wake County. A copy of the written request shall be served on the town, in accordance with the rules of civil procedure. Within 30 days after receipt of the copy of the written request for judicial review, the hearing officer shall transmit to the reviewing court the original official record, or a certified copy thereof, unless otherwise agreed to by the parties or ordered by the court.
(Ord. No. 2011-Code-09, 12-15-2011)

Secs. 36-189—36-202. Reserved.

ARTICLE V. RECLAIMED WATER SYSTEM

Sec. 36-203. Purpose and intent.

It is the town's purpose and intent to establish a reclaimed water system and to extend such system to certain areas of the town where the town council determines that the extension of such a system is practical and economical. Once such reclaimed water is made available to a property, use of reclaimed water will be required for landscape and grounds irrigation systems and will be permitted for other authorized uses. The reclaimed water distribution system will be constructed in sections and phases to provide reclaimed water service to designated areas as determined by the town council and pursuant to the terms and conditions set forth herein.
(Code 1982, § 19-10; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-204. Reclaimed water system part of town utility system and other definitions.

(a) The reclaimed water system is a part of the town of Cary utility system. Reclaimed water facilities are generally recognized by federal and state regulations as part of the sewer system because of their reliance on highly treated wastewater effluent as a supply source. Reclaimed water is, however, a valuable resource that offsets potable water demand, and thus has a relationship with both water and sewer systems. All provisions of Articles I, II and III of Chapter 36, Utilities, shall apply to the reclaimed water system unless otherwise indicated herein. To this end, the terms water system, water pipe, town water, waterworks, water service, water distribution system, water, water meters, water mains and other references to the water system contained in Articles I, II and III shall be deemed to include and mean such portions of the reclaimed water system, unless in conflict with the provisions contained in this Article V, or specifically excluded herein. Among the sections that do not apply to the reclaimed water system are sections 36-34 and 36-81.

(b) For the purpose of this article, the definitions contained in this section shall apply unless otherwise specifically stated.

Available means that a reclaimed water distribution main is or will be located at a property line of a property on which an irrigation system is installed or proposed, or a property proposed to be serviced with reclaimed water.

Cross-connection means any physical connection or arrangement which would allow the movement of fluids between the potable water system and any other piping system, such as the reclaimed water system.

Customer means the town of Cary reclaimed water customer and the actual user of the reclaimed water.

Department means the department of utilities.

Director means the Director of utilities of the town of Cary and his or her designee.

Distribution mains means those conduits used to supply reclaimed water to service lines from transmission mains.

Irrigation system means a device or combination of devices having a hose, pipe, or other conduit installed in the landscape which transmits town water, through which device or combination of devices town water, or a mixture of town water and chemicals is drawn and applied to residential or commercial lawns, landscapes or greenspace.

North Carolina rules means the regulations for reclaimed water and water reuse as stated in the North Carolina administrative code section 15A NCAC 2H.0200 as amended from time to time.

Potable water means potable water treated, produced, purchased and/or delivered by the town of Cary water system.

Reclaimed water means water that has received at least advanced secondary treatment, meets water quality requirements defined by the North Carolina rules and is reused after flowing out of a wastewater treatment facility.

Reclaimed water system means all equipment, piping, valves and associated hardware and other appurtenances, including meters, from the customer's reclaimed water meter back to, and including the reclaimed water production and pumping facility.

Service line means that conduit for reclaimed water from the distribution main to the property line.

Transmission mains means those conduits used to supply reclaimed water from the pumping station or treatment plant to the distribution mains.
(Code 1982, § 19-106; Ord. No. 99-013, § 1, 8-12-1999; Ord. No. 2010-Code-07, 9-16-2010; Ord. No. 2018-Code-03, § 1, 6-28-2018; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-205. Generally.

(a) Once reclaimed water is available to property, the property owner may connect to the reclaimed water system upon submission of a fully executed application as required by the director, and upon compliance with all other town requirements. Reclaimed water may be used for irrigation purposes and for other nonpotable water purposes in accordance with federal, state and local ordinances, rules, and regulations. If reclaimed water is to be used for any purpose other than land irrigation, the customer shall obtain prior approval of such use from the director.

(b) As an incentive to development of an initial demonstration phase of this project, customers that have signed letters of intent for the initial phase of the reclaimed water project may have conditions in their agreements with the town that are different from the conditions in this article.
(Code 1982, § 19-107; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-206. Mandatory use of reclaimed water for irrigation systems.

It is unlawful to use potable water for irrigation systems 90 days after a property owner or water customer has been notified by the director that reclaimed water is available to a particular property or site ("notification of availability").
(Code 1982, § 19-108; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-207. Connection to reclaimed water system.

(a) *Customers with existing irrigation systems.* When reclaimed water becomes available to a property, the director shall provide written notice to the town water customer located on that property of such availability. Customers with existing irrigation systems using potable water who desire to continue to maintain such systems using town water, must apply for reclaimed water in accordance with the application procedures specified in this article and must disconnect said systems from the town potable water system and connect to the reclaimed water system within 90 days of such written notice of availability. The director shall have the authority to grant temporary exemptions from this section in the event of reclaimed water shortages or for other good cause, in which case the temporary exemption shall not exceed 180 days.

(b) *Customers with new irrigation systems.* All new irrigation systems designed to use town water constructed after the effective date of this article must connect to the reclaimed water system at construction, if reclaimed water is available to the property. Such connection must be made prior

to, or contemporaneously with connection of other improvements on the property to the town's potable water system. If reclaimed water is not available to a property at the time of construction of an irrigation system, connection to the reclaimed water system must be made within 90 days of notice of availability from the director.
(Code 1982, § 19-109; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-208. Reclaimed water service application requirements.

Applications for reclaimed water service shall be made and will be accepted in the same manner as applications for water and sewer service, subject to the provisions of this article. articles I, II, and III of chapter 36, Utilities outlines the requirements for service. In addition, the town of Cary finance department and the department of development services, inspections and permits division have specific procedures and policies in place for servicing, regulating, billing, and collecting of bills of utility customers. Such policies, along with all policies and procedures concerning enforcement and fining and setting standards for the design and installation utility pipelines and other appurtenances apply to the reclaimed water system, including its design, installation, and maintenance.
(Code 1982, § 19-110; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-209. Installation of lines and easement dedications.

The town will be responsible for reclaimed water service lines to the applicant's property line, provided easements or other access is available to the town. The applicant shall be responsible for all costs and expenses of installation and maintenance of the reclaimed water line and all appurtenances from their property line on their property. In the event the town is required to locate the reclaimed water meter or any other part of the town reclaimed water system on applicant's property, the applicant shall dedicate land or perpetual easements on, over and through applicant's land for the reclaimed water transmission and distribution facilities as necessary to provide reclaimed water service to applicant's property. No reclaimed water lines or other facilities will be installed or accepted by the town for maintenance unless such lines or facilities are in a dedicated public right-of-way or dedicated public easement. Any new easement shall be adequately sized to accommodate construction and maintenance of the reclaimed water line or system component. No obstruction of any kind shall be planted, built, or otherwise created within the limits of the easement or right-of-way without written permission of the director. Details of the town's requirements for easements can be found in this chapter, utilities and the applicable sections of the towns technical specifications. Delays by applicant in granting easements or dedications will result in the loss of potable water for irrigation, if more than 90 days have passed from notification of availability and if no good cause is shown for the failure to grant the necessary easements.
(Code 1982, § 19-111; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-210. Meter requirements.

Metering of reclaimed water is mandatory. There will be no exceptions to this requirement. Metering requirements are outlined in this chapter and in the towns standard specifications.
(Code 1982, § 19-112; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-211. Permits.

All applicants for reclaimed water, at the applicant's own cost and expense, shall apply for, obtain and meet all requirements of all necessary permits, licenses, conditions, and approvals for the initial construction and the operation of the onsite reclaimed water facilities and the use of reclaimed water.
(Code 1982, § 19-113; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-212. Authority to adopt rules and regulations.

The town council may by resolution establish reasonable rules and regulations concerning the reclaimed water system and the use of reclaimed water. Additional standard policies and procedures may be adopted concerning the reclaimed water system. Insofar as there is not conflict with the provisions of this article, town policies and procedures pertaining to potable water service shall apply.
(Code 1982, § 19-114; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-213. Authority to adopt rates, fees and charges.

The town council may by resolution, duly adopted after a public hearing, establish rates, fees and charges for the reclaimed water system and provide terms and conditions for the payment and collection of same. After the initial establishment of a reclaimed water rate, and fee or charge for connection to the reclaimed water system, these rates, fees and charges will normally be reviewed and adjusted annually as part of the annual budgeting cycle, as provided in article I.
(Code 1982, § 19-115; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-214. Priorities for extending reclaimed water service.

The town council will establish priorities for extension of the reclaimed water system, as it does for water and sewer system extensions. The town council may establish priorities for extension of service outside the utility service boundaries. Provision of reclaimed water service outside the town limits will be considered on a case-by-case basis and may be time limited to benefit the town.
(Code 1982, § 19-116; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-215. Conditions of reclaimed water service use.

(a) *General.* The town may terminate, discontinue, or suspend reclaimed water service in accordance with this chapter and town policies and procedures in the event of (i) a violation of this article or town regulations, policies or procedures, (ii) failure to pay bills by the due date, (iii) tampering with any utility service, (iv) the existence of a plumbing cross-connections with another water source, or (v) any customer condition or action that may be detrimental to the town's potable water system, its reclaimed water system, or its wastewater collection and treatment system. The town may, at its option, suspend service until the condition is corrected and all costs due the town are paid. These costs may include delinquent billings, connection charges, and payment for any

damages caused to the potable water, reclaimed water, or wastewater collection or water distribution system The details of the town's procedures for discontinuing service are found in this chapter and in appropriate town policies and finance department procedures.

(b) *Cross-connection control.* There shall be no cross connections between the reclaimed water system on a customer's property and the town potable water system. In all premises where reclaimed water service is provided, the public or private potable water supply shall be protected by an approved cross-connection control plan. The plan for cross-connection control must be submitted with the application for reclaimed water service and must receive the prior approval of the director. In the event a cross-connection is found, the cross-connection shall be immediately disconnected, and reclaimed water service will be suspended. Before reconnection of the reclaimed water service, the public potable water system shall be protected against the possibility of future cross connections to the director's satisfaction. Additional protection against cross-connection may be required as specified by the director at the customer's expense before reclaimed water service is resumed.

(c) *Right of entry.* In addition to the authority to enter property contained in section 36-12, the director may enter any premises to determine the presence of any cross connections or other potential hazards to the town potable water system. Each customer of reclaimed water service shall, by completing the reclaimed water application, give written consent to such entry upon the customer's premises.
(Code 1982, § 19-117; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-216. Service interruption.

The town reserves the right to temporarily discontinue service to any portion or all of the reclaimed water system as deemed necessary by the director. In addition, the director shall have the authority to establish schedules which restrict the use of reclaimed water at certain times in order to reduce maximum pressure demands on the system and to regulate usage during periods of limited reclaimed water availability. This authority is in addition to the water conservation provisions of article III of this chapter, and the disclaimer of liability contained in section 36-10.
(Code 1982, § 19-118; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-217. Maintenance by customer.

The property owner and/or customer shall be responsible for the maintenance of all reclaimed water lines and appurtenances on the customer's property, unless the meter was, of necessity, located beyond the customer's property line, in which case the customer shall be responsible for all reclaimed water lines and appurtenances beyond the meter. The town reserves the right to disconnect the service to any property when the reclaimed water system and appurtenances are not properly maintained. In addition, should the customer require reclaimed water at different pressures, or different quality, or in any way different from that normally supplied by the town, the customer shall be responsible for the necessary devices to make adjustments and for obtaining approval by the director.
(Code 1982, § 19-119; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-218. Conservation of water resources.

It is the policy of the town of Cary to wisely use natural resources. In addition to all other conservation measures contained in this chapter the town may terminate, suspend or discontinue reclaimed water service if customer usage of reclaimed water varies substantially from the overall loading rates outlined in the customer's application for service.
(Code 1982, § 19-120; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-219. Right to refuse service.

The town makes no guarantees that reclaimed water service will be provided, or, once provided, continued. The town may, at any time, and from time to time, refuse to extend or suspend or terminate service on the basis of a use detrimental to the system, an inadequate supply of reclaimed water, the failure to pay required fees, or for any other reason which, in the judgment of the director, will cause the extension not to be to the benefit of the town.
(Code 1982, § 19-121; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-220. Ownership by town.

In accordance with articles I, II and III, all reclaimed water facilities and appurtenances within dedicated public easements when constructed or accepted by the town, shall become and remain the property of the town. No person shall by payment of any charges provided herein, or by causing any construction of facilities accepted by the town, acquire any interest or right in any of these facilities or any portion thereof, other than the privilege of having their property connected thereto for reclaimed water service in accordance with this article and any amendments thereof.
(Code 1982, § 19-122; Ord. No. 99-013, § 1, 8-12-1999)

CODE COMPARATIVE TABLE

1976 CODE

This table gives the location within this Code of those sections of the 1976 Code that are included herein.

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CODE COMPARATIVE TABLE

1982 CODE

This table gives the location within this Code of those sections of the 1982 Code that are included herein. Sections of the 1982 Code not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances included herein (including ordinances contained in the 1982 Code) see the table immediately following this table.

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