

Chapter 28

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

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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 town engineer 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 town engineer.
(Code 1976, § 13-4; Code 1982, § 16-1)

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 and utilities 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)

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 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.

(Ord. No. 2011Code-06, 9-27-2011)

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.

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(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 town engineer. 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 town engineer 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)

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 references—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 town engineer or town manager.

(Code 1976, § 14-23; Code 1982, § 17-45)

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 town engineer. 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)

Sec. 28-100. Removal of obstruction

The town shall remove sight distance obstructions located within the right-of-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 town engineer's 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)

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. Rights of appeal.

(a) In cases where the town manager or designee denies a person's application to encroach upon a public street or street right-of-way, or is willing to grant that request but subject to conditions or terms the applicant deems to be unsatisfactory, resulting in an inability to finalize the requisite encroachment or franchise agreement, the applicant may seek review of the town manager's (or designee's) decision before the town council.

(b) Any person subject to any enforcement action pursuant to section 28-164 above may appeal the enforcement action to the town council.

(c) In any case where a person seeks review by the town council of any decision made by the town manager or designee pursuant to this section, the applicant must request a hearing before the town council in writing to the town engineering department, within ten days of the applicant's notice of the town manager's (or designee's) decision at issue. In such submission, the applicant must identify the issues or disagreements he has with the town manager's (or designee's) relevant decision. In such cases, the town council shall make the final municipal decision, through adoption of an appropriate resolution.

(Code 1982, § 17-112; Ord. No. 00-031, 12-14-2000)

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.

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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.

(b) The action or decision of the town manager may be appealed to the town council by the filing of a written "notice of appeal of the action of the town manager" with the town clerk within 5 business days of the date of the Manager's decision. Such written notice shall identify the person filing the appeal and shall specify with particularity the facts and basis for the appeal. The town council shall hear an appeal at the first regularly scheduled town council meeting at which the law allows the matter to be considered following receipt of the notice of appeal.

(Code 1982, § 12-222; Ord. No. 95-010, 3-9-1995; 2008-Code-09, 11-20-2008)

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)

CARY CODE OF ORDINANCES