

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: First Reading: December 6, 2018
Second Reading: December 20, 2018

AGENDA ITEM NUMBER: 17

SUBJECT: SECOND READING ON ORDINANCE REVISING CHAPTER 1 OF THE FORSYTH COUNTY CODE ENTITLED, "GENERAL PROVISIONS" (FORSYTH COUNTY ATTORNEY'S OFFICE)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ **COUNTY MANAGER** **DATE:** _____

**ORDINANCE REVISING CHAPTER 1
OF THE FORSYTH COUNTY CODE ENTITLED
"GENERAL PROVISIONS"
(FORSYTH COUNTY ATTORNEY'S OFFICE)**

BE IT ORDAINED by the Forsyth County Board of Commissioners that Chapter 1 of the Forsyth County Code, entitled, "General Provisions" consisting of Sections 1-1 through 1-12, is hereby revised as shown in the attached Sections 1-1 through 1-12.

BE IT FURTHER ORDAINED that this ordinance shall become effective upon final adoption.

Adopted this 6th day of December 2018.

CHAPTER 1 - GENERAL PROVISIONS

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

The provisions in the following chapters and sections shall constitute and be designated the "Forsyth County Code" and may be so cited.

Editors Note: Sec. 1 of an ordinance and resolution adopted by the **Town of Rural Hall** on June 10, 1974, Sec. 1 of an ordinance and resolution adopted by the **Town of Walkertown** on August 23, 1984; and Sec. 1 of an ordinance and resolution adopted by the **Village of Clemmons** on December 3, 1986; and Secs. 1--3, of an ordinance and resolution adopted by the **Town of Lewisville** on August 15, 1991; and Secs. 1--3, adopted by the **Village of Tobaccoville** on September 23, 1991, provided substantially as follows:

All of the ordinances and actions of the Board of County Commissioners of Forsyth County having the effect of Ordinances shall continue and remain in effect within the incorporated and jurisdictional limits of the Towns of Rural Hall and Walkertown and the Village of Clemmons and the Town of Lewisville and the Village of Tobaccoville, shall be fully applicable and enforceable within the towns, village and jurisdictional limits as in the unincorporated areas of the County.

County Ord. No. 9-91, adopted August 26, 1991, acknowledged receipt of the **Town of Lewisville** ordinance and resolution and agreed to such continuation and enforcement.

~~However, Ord. No. 1-1992, adopted Jan. 13, 1992, §§ 1, 2, provided as follows:~~

~~1.~~

~~The Board of Commissioners of Forsyth County hereby amends its Resolution and Ordinance (Code Ordinance No. 9-91) adopted August 26, 1991, by relinquishing its jurisdiction to franchise and regulate CATV systems within the corporate limits of the Town of Lewisville, effective upon the later of the effective date of the first franchise agreement entered into between the Town of Lewisville and a CATV system franchisee or the effective date of this relinquishment of the franchise and regulatory authority by Forsyth County.~~

~~2.~~

~~Except as provided in the preceding section, the ordinances and resolutions existing between the Town of Lewisville and Forsyth County (Town of Lewisville Ordinance No. 1 and Forsyth County Code Ordinance No. 9-91) for ordinances of the County and services furnished by the County for and to the Town remain in effect.~~

County Ord. No. 13-91, adopted September 23, 1991, acknowledged receipt of the **Village of Tobaccoville** ordinance and resolution and agreed to such continuation and enforcement.

It should be noted that County Ord. No. 18-86, adopted December 15, 1986,

acknowledged receipt of the **Village of Clemmons** ordinance and resolution and agreed to such continuation and enforcement. Subsequently, Ord. No. 8-91, adopted Aug. 12, 1991, provided as follows:

1.

The Board of Commissioners of Forsyth County hereby amends its Resolution and Ordinance adopted December 15, 1986, by relinquishing its jurisdiction for planning and the regulation of development within the corporate limits of the Village of Clemmons, other than set forth in section 2. below, pursuant to the provisions of Article 19 of Chapter 160A of the North Carolina General Statutes, effective 12:00 a.m. midnight, August 31, 1991.

2.

By agreement with the Village of Clemmons, the Board of Commissioners retains jurisdiction over enforcement of the State Building Code and local building code enforcement, including Chapter 7 of the Forsyth County Code, as provided in Part 4 of Article 18 of Chapter 153A of the North Carolina General Statutes, including the retention of fees for those services.

3.

Except as provided in section 1. above, the agreement between Forsyth County and the Village of Clemmons dated July 1, 1987, for services furnished by the County to the Village remains in effect.

The **Town of Bethania** adopted Ord. No. One and Resolution on June 12, 1995, which provided that all ordinances and actions having the effect of ordinances of Forsyth County shall be applicable within the town and the jurisdictional limits thereof. Subsequently, Forsyth County adopted a resolution on June 26, 1995, approving an agreement between the county and the Town of Bethania for services to be provided to the town and acknowledging receipt of the town's Ord. No. One. Such agreement is not set out at length herein, but is on file and available for inspection in the offices of the town clerk and the clerk of the county board of commissioners.

~~The Town of Walkertown adopted an ordinance granting a non exclusive franchise to operate a community antenna television system in the town. Secs. 1, 3, and 38 of such ordinance provide as follows:~~

~~1.~~

~~Grant. The Town of Walkertown (hereinafter "Town") hereby grants the non exclusive right, privilege, and franchise to operate a community antenna television system (hereinafter "CATV system") in Walkertown to Summit Cable Services of Forsyth County, Inc. (hereinafter "Grantee"). Said franchise is granted pursuant to North Carolina General Statute 160A-319.~~

~~3.~~

~~Term. The term of the franchise shall be coterminous with the Forsyth County Community Antenna Television System ordinance and shall expire on February 13, 1997.~~

~~38.~~

~~Adoption. This franchise ordinance is adopted this 11th day of July, 1995 and shall be effective upon relinquishment by Forsyth County of its jurisdiction over CATV within the Town of Walkertown.~~

~~Such ordinance in its entirety is on file and available for inspection in the offices of the town clerk and the clerk of the county board of commissioners. Subsequently, Ord. No. 1-98, §§ 1, 2, adopted Feb. 23, 1998, provided:~~

~~1.~~

~~The Board of commissioners of Forsyth County hereby relinquishes to the Town of Walkertown the Board's jurisdiction to franchise and regulate CATV systems within the corporate limits of the Town of Walkertown, effective upon the effective date of the first subsequent franchise agreement entered into between the Town of Walkertown and a CATV system franchisee.~~

~~2.~~

~~Except as provided herein, the ordinances, resolutions, and contracts existing between the Town of Walkertown and Forsyth County shall remain in full force and effect.~~

The **Town of Lewisville** by Res. No. 95050 adopted Sept. 15, 1995, requested that Forsyth County Board of Commissioners relinquish jurisdiction for planning, zoning, and regulation of development within the incorporated limits of the town; hence, the county adopted a resolution on Sept. 25, 1995, to provide that the county waives the two year notice requirement of G.S. 160A-360(q) in order that the Town of Lewisville may assume jurisdiction for planning, zoning and subdivision regulation effective at 12:01 a.m. on Nov. 1, 1995, within the incorporated town limits; and that all other county ordinances continue to apply within the town limits, including building code enforcement, and the county will continue to retain the fees and charges pursuant to such ordinances.

State Law References: Authority of county to adopt and issue a code of its ordinances, G.S. § 153A-49; pleading and proving county ordinances, G.S. 153A-50.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances of the board of county commissioners, the following definitions and rules shall be observed, unless inconsistent with the manifest intent of the board of county commissioners, or unless the context clearly requires otherwise:

Board. The terms "board," or "board of county commissioners" and "board of commissioners" shall mean the Board of County Commissioners of Forsyth County, North Carolina.

Code. The term "Code" or "this Code" shall mean the Forsyth County Code, as designated in section 1-1.

County. The words "the county" or "this county" shall mean the County of Forsyth, State of North Carolina.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, associations and corporations, as well as to males.

G.S. The designation "G.S." appearing in the text or in the state law references shall refer to the General Statutes of North Carolina, as amended.

Highway. The word "highway" shall include any street, alley, highway, avenue or public square, bridge, viaduct, tunnel, causeway, and sidewalk lying within the highway right-of-way, dedicated or devoted to public use.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Month. The word "month" shall mean a calendar month.

N.C. Admin. Code, NCAC. These terms refer to the North Carolina Administrative Code.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. Any word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which by law an affirmation may be substituted for an oath, and in like cases the words "affirm" and "affirmed" shall be equivalent to the words "swear" and "sworn."

Officers, departments, etc. Where reference is made to any department, officer or agency, it shall be construed as if followed by the words "of Forsyth County, North Carolina."

Official time standard. Whenever certain hours are named herein, they shall mean standard time or daylight saving time as may be in current use in the county.

Or/and. "Or" may be read "and," and "and" may be read "or" if the sense requires it.

Owner. The word "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 a part of such building or land.

Person. The word "person" shall extend and be applied to associations, corporations, firms, partnerships and bodies politic and corporate, as well as to individuals.

Personal property. The words "personal property" include every species of property except real property as herein defined.

Preceding/following. The words "preceding" and "following" mean next before and next after respectively.

Property. The word "property" shall include real and personal property.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Shall. The word "shall" is mandatory.

Signature or subscription. The word "signature" or "subscription" shall include a mark properly witnessed when a person cannot write.

State. The words "the state" or "this state" shall be construed to mean the State of North Carolina.

Street. The term "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, squares, bridges, viaducts, tunnels, causeways, sidewalks lying within the street right-of-way, and all other public highways.

Tenant or occupant. The word "tenant" or "occupant," applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

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

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

Year. The word "year" shall mean a calendar year.

State Law References: Similar rules of construction, G.S. § 12-3.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of the sections, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. This section shall not apply to the zoning ordinance, as set out in Chapter 23 of this Code.

Sec. 1-4. Certain ordinances and resolutions not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following ordinances or resolutions, which are not included herein:

- (1) Any ordinance or resolution promising or guaranteeing the payment of money for the county, or authorizing the issuance of any bonds of the county or any evidence of the county's indebtedness;
- (2) Any appropriation ordinance or resolution or ordinance or resolution providing for the levy of taxes or for an annual budget, or prescribing salaries, retirement benefits, and other compensation for county officers and employees;
- (3) Any ordinance or resolution granting any franchise, permit or other right;
- (4) Any ordinance or resolution approving, authorizing or otherwise relating to any contract, agreement, lease, deed or other instrument;
- (5) Any ordinance or resolution authorizing or otherwise relating to any public improvement project or work;
- (6) Any ordinance or resolution zoning or rezoning specific property or amending the zoning map;
- (7) Any temporary or special ordinance or resolution or ordinance or resolution of limited interest or transitory nature;

and all such ordinances and resolutions are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

State Law References: Authority to omit ordinances of the types enumerated above from the Code, G.S. § 153A-49.

Sec. 1-5. Code does not affect prior offenses, rights, etc.

Nothing in this Code or the ordinance 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. 1-6. Amendments or additions to Code.

(a) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section _____ of the Forsyth County Code is hereby amended to read as follows:" The new provisions shall then be set out in full as desired.

(b) In the event a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Forsyth County Code is hereby amended by adding a section, to be numbered _____, which said section reads as follows:" The new section shall then be set out in full as desired.

Sec. 1-7. Supplementation of Code.

(a) By contract or by county personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the board of county commissioners. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the board of county commissioners during the period covered by the supplement and all changes made thereby in the Code. 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 codifier (meaning the person, agency or organization 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 subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
- (5) Make other nonsubstantive changes necessary to preserve the original

meaning of ordinance sections inserted into the Code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

State Law References: Authority to maintain Code by replacement pages, G.S. §153A-49.

Sec. 1-8. General penalty; continuing violations.

Wherever in this Code or in any ordinance of the county any act is prohibited or is made or declared to be unlawful or an offense or a class 3 misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a class 3 misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not more than five hundred dollars (\$500.00) for each separate violation. Each day any violation of this Code or any ordinance shall continue shall constitute a separate offense, unless otherwise specified.

~~This section shall apply to Forsyth County Code criminal violations which are governed by applicable provisions of Chapter 539 of the 1993 Session Laws. Criminal violation punishment set forth in that state law, in addition to the fines, shall also apply to ordinance violations as provided in applicable provisions of said Chapter 539 based on the misdemeanor offense class.~~

~~Applicable criminal fines and other punishment of the misdemeanor offense class set forth in Chapter 539 of the 1993 Session Laws and amendments thereto shall apply to Forsyth County ordinances where no provision is set forth in the county ordinance. The maximum fine for Class 3 misdemeanors is expressly greater than fifty dollars (\$50.00), up to the maximum allowed by state law.~~

If any person shall violate an ordinance of the county regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00), except where state law or provisions of this Code specify a different penalty.

(Ord. No. 2-92 §§ 1, 2, 4-13-92; Ord. No. 3-95, §§ 1, 2, 5--7, 7-10-95)

State Law References: Violations of county ordinances deemed misdemeanors punishable as prescribed above, G.S. § 14-4. See also, G.S. § 153A-123, prescribing alternate methods for enforcement of ordinances.

Sec. 1-9. Alternate remedies for enforcement.

In addition to the provisions of section 1-8, any provision of this Code or other ordinance of the County may be enforced by any one or more of the remedies authorized by section 153A-123, General Statutes of North Carolina.

Sec. 1-10. Entry and inspection.

Any authorized personnel, representative, or official of the county charged with the enforcement of an ordinance or ordinances of Forsyth County contained in the Code shall have the right, after exhibiting proper identification, to peacefully enter and inspect property for the purpose of determining if a violation or violations of such ordinance or ordinances of the county exist due to conditions existing upon property; provided that such entry shall be with the permission, freely given, of the owner or occupant of said property; and if such owner or occupant shall refuse to grant the right to enter and inspect, said personnel, representative, or official of the county shall have all the remedies allowed and provided by law, including Article 4A of Chapter 15 of the North Carolina General Statutes entitled "Administrative Search and Inspection Warrants" and any amendments or successor statutes thereto. No application for a warrant shall be made under this section without the approval of the county attorney.
(Ord. No. 5-75, § 1, 9-8-75)

Sec. 1-11. Assault.

If any person shall willfully and unlawfully assault any authorized personnel, representative, or official of the county while discharging or attempting to discharge a duty of his position or office in the enforcement of an ordinance or ordinances of Forsyth County contained in the Code, such person shall be guilty of a misdemeanor. No legal proceedings shall be initiated under this section without the approval of the county attorney.
(Ord. No. 5-75, § 2, 9-8-75)

Sec. 1-12. Severability of parts of Code.

It is hereby declared to be the intention of the board of county commissioners 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 or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the board of county commissioners without the incorporation into this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.
(Ord. No. 5-75, § 3, 9-8-75)