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ORD # 0-07-2020 *WTK*

**AN ORDINANCE TO AMEND MULTIPLE SECTIONS OF THE  
TOWN OF WENDELL CODE OF ORDINANCE AND UNIFIED DEVELOPMENT  
ORDINANCE TO COME INTO COMPLIANCE WITH CHAPTER 160D OF THE NORTH  
CAROLINA GENERAL STATUTES.**

WHEREAS, Part I, Subpart A- Charter, Sec. 2.2- Extension of Corporate Boundaries, Sec. 6.1- Conditional use zoning districts, Sec 1-2- Definitions and rules of construction, Sec. 1-17- Corporate Limits, Sec.1-18- General penalty, Division 2- Planning Board, Division 3- Board of Adjustment, Sec. 2-335- Ordinance making procedure, Chapter 4- Animals, Sec. 12.6- Establishment of primary fire limits, Sec. 18-213- Enforcement, Sec. 26.03- Annexation required when service requested, Article III- Trees, Sec. 30-20- Building permits application; certification, Sec. 34-19- Purpose, Sec. 34-89- Failure to comply with order, Sec. 34-90- Appeals, Sec. 34-91- Petition to superior court, Sec 34-93- In rem action by inspector; placarding, Sec. 34-94- Costs as lien on premises of the Town of Wendell Code of Ordinances and Section 1.3- Authority, Section 1.4- Jurisdiction, 1.5- B, Section 2.1- General Intent, Section 3.3- Additional Standards by use, Section 6.5- Stormwater Runoff Provisions: Post-Construction Stormwater Ordinance, Section 6.7- Flood Damage Protection Ordinance, Section 12.2- Applicability, Section 13.10- Nonconforming Plans, Section 14.2- Planning Board, Section 14.3- Board of Adjustment, Section 14.4- Technical Review Committee, Section 15.3- Administrator, Section 15.14- Vested Rights, Section 15.16- Administrative Appeals and Section 19.3- Definitions of the UDO contains references to North Carolina General Statute 160A; and

WHEREAS, the Town of Wendell Unified Development Ordinance Section 15.11 establishes uniform procedures for amending the text of the Ordinance;

NOW, THEREFORE BE IT ORDAINED by the Town Board of the Town of Wendell, North Carolina:

SECTION 1. That Part I, Subpart A- Charter, Sec. 2.2- Extension of Corporate Boundaries, Sec. 6.1- Conditional use zoning districts, Sec 1-2- Definitions and rules of construction, Sec. 1-17- Corporate Limits, Sec.1-18- General penalty, Division 2- Planning Board, Division 3- Board of Adjustment, Sec. 2-335- Ordinance making procedure, Chapter 4- Animals, Sec. 12.6- Establishment of primary fire limits, Sec. 18-213- Enforcement, Sec. 26.03- Annexation required when service requested, Article III- Trees, Sec. 30-20- Building permits application; certification, Sec. 34-19- Purpose, Sec. 34-89- Failure to comply with order, Sec. 34-90- Appeals, Sec. 34-91- Petition to superior court, Sec 34-93- In rem action by inspector; placarding, Sec. 34-94- Costs as lien on premises of the Town of Wendell Code of Ordinances be amended to read as follows:

**PART I CHARTER AND LOCAL LAWS**

**Subpart A - CHARTER**

**State Law reference**— General laws supplementary to the charter, G.S. 160D-111.

**ARTICLE II. - CORPORATE BOUNDARIES**

Sec. 2.2. - Extension of corporate boundaries.

State Law reference— Corporate limits, G.S. Article 2 of Chapter 160D of the General Statutes

**ARTICLE VI. - PLANNING AND REGULATION OF DEVELOPMENT (Delete Entirely)**

Sec. 6.1. - Conditional use zoning districts. (Delete Entirely)

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

**State Law reference**— Similar state law definitions, G.S. 1-593, 12-3, 160A-1, 160D-102.

Sec. 1-17. - Corporate limits.

**State Law reference**— Boundaries to be as specified by Charter and altered as permitted by law or by local act of the General Assembly, G.S. 160A-21; map of corporate limits to be kept in office of town clerk, G.S. 160D-105.

Sec. 1-18. - General penalty.

**State Law reference**— Authority of town to impose penalty, G.S. 160A-175, G.S. 160D-404; violation of town ordinances, G.S. 14-4.

## DIVISION 2. - PLANNING BOARD

**State Law reference**— Planning board, G.S. 160D-301

## DIVISION 3. - BOARD OF ADJUSTMENT

**State Law reference**— Board of adjustment, G.S. 160D-302.

Sec. 2-335. - Ordinance-making procedure.

**State Law reference**— Town's general ordinance-making power, G.S. 160A-174; Article 4 of G.S. 160D.

## Chapter 4 - ANIMALS

**State Law reference**— Protection of animals, G.S. ch. 19A; dogs, G.S. ch. 67; regulation of domestic animals pursuant to town's police power, G.S. 160A-174, Article 4 of G.S. 160D, 160A-186.

Sec. 12-6. - Establishment of primary fire limits.

Pursuant to G.S. 160D-1128, the primary fire limits of the town shall be and are defined as the exact boundaries of the downtown retail overlay district as illustrated in the map in section 38-204.

Sec. 18-213. - Enforcement.

(a) Violation of this article shall be a misdemeanor as provided under G.S. 160A-175, G.S. 160D-404 and G.S. 14-4. Each day's continuing violation shall constitute a separate offense as provided by G.S. 160A-175.

(b) The town may also secure effective and other appropriate equitable remedies to ensure compliance with this article, as provided by G.S. 160A-175 and G.S. 160D-404.

Sec. 26-3. - Annexation required when service requested. (Delete Entirely)

## ARTICLE II. - TREES

**State Law reference**— Restriction of forestry activities prohibited, G.S. 160D-921.

Sec. 30-20. - Building permits application; certification.

**State Law reference**— Permit requirements, G.S. 160D-1110.

## ARTICLE II. - MINIMUM HOUSING CODE

Sec. 34-19. - Purpose.

(a) Pursuant to G.S. 160D-1201, it is found and declared that there exist in the town dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe or unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.

(b) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. 160D-202 et seq., it is the purpose of this article to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. 160D-1201.

Sec. 34-89. - Failure to comply with order.

(a) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the minimum housing inspector to repair, alter, or improve the same within the time specified therein, or if the owner of a dilapidated dwelling shall fail to comply with an order of the inspector to vacate and close, and remove or demolish the same within the time specified therein, the inspector shall submit to the board of commissioners at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing such owner to comply with the order of the inspector, as authorized by G.S. 160D-1203(5).

(b) *Order to repair, posting, etc.* After failure of an owner of a deteriorated dwelling or dwelling unit, or of a dilapidated dwelling, to comply with an order of the inspector within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (a) of this section, the inspector shall submit to the board of commissioners an ordinance ordering the inspector to cause the dwelling or dwelling unit to be repaired, altered, improved, or vacated and closed and removed or demolished, as provided in the original order of the inspector, and pending such removal or demolition, to placard the dwelling as provided by G.S. 160D-1203(4).

Sec. 34-90. - Appeals.

(b) Upon the filing of any notice of appeal, the inspector shall forthwith transmit to the board all the papers constituting the record on which the decision appealed from was made. When an appeal is from a decision of the inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the inspector certifies to the board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished by the appellant), a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown on not less than one day's written notice to the inspector, by the board, or by a court of record upon petition made pursuant to G.S. 160D-1208(d) and section 34-89.

Sec. 34-91. - Petition to superior court.

Any person aggrieved by an order issued by the minimum housing inspector or a decision rendered by the board of commissioners shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the inspector pending a final disposition of the cause, as provided by G.S. 160D-1208(d).

Sec. 34-93. - In rem action by inspector; placarding.

(a) After failure of an owner of a dwelling or dwelling unit to comply with an order of the inspector issued pursuant to the provisions of this article, and upon adoption by the board of commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. 160D-1203(5). and section 34-89, the inspector shall proceed to cause such dwelling or dwelling unit to be repaired, altered, or improved to comply with the minimum standards of fitness established by this article, or to be vacated and closed and removed or demolished, as directed by the ordinance of the board of commissioners. He shall cause to be posted on the main entrance of the dwelling or dwelling unit a placard with the following words: This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.

(b) Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160D-1203(5).

Sec. 34-94. - Costs as lien on premises.

(a) As provided by G.S. 160D-1203(7), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the minimum housing inspector pursuant to section 34-89 shall be a lien against the real property upon which the cost was incurred.

(b) Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. 160D-1201 et seq.

SECTION 2. That Section 1.3- Authority, Section 1.4- Jurisdiction, 1.5- B, Section 2.1- General Intent, Section 3.3- Additional Standards by use, Section 6.5- Stormwater Runoff Provisions: Post-Construction Stormwater Ordinance, Section 6.7- Flood Damage Protection Ordinance, Section 12.2- Applicability, Section 13.10- Nonconforming Plans, Section 14.2- Planning Board, Section 14.3- Board of Adjustment, Section 14.4- Technical Review Committee, Section 15.3- Administrator, Section 15.14- Vested Rights, Section 15.16- Administrative Appeals and Section 19.3- Definitions of the Town of Wendell Unified Development Ordinance be amended to read as follows:

### 1.3 - Authority

The zoning provisions in this UDO are enacted herein are under the authority of North Carolina General Statute § 160D, which extends to cities the authority to enact regulations which promote the health, safety, and the general welfare of the community. It further authorizes cities to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. This section authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such regulations shall be uniform for each use class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.

The subdivision provisions in this UDO are enacted herein are under the authority of G.S. § 160D, Article 8 which provides for the coordination of streets within proposed subdivisions with existing or planned streets and with other public facilities; the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to provide recreation opportunities serving residents of more than one neighborhood; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.

### 1.4 - Jurisdiction

The provisions of the UDO shall apply within the corporate limits of the Town and within the extraterritorial jurisdiction established by ordinance, as provided under GS §160D-202, the jurisdiction being delineated on a map and approved by the Wake County Board of Commissioners. These regulations apply to the development and use of all land and structures within the corporate limits of the Town of Wendell, North Carolina, and within the extraterritorial jurisdiction exercised by ordinance and denoted on the Zoning Map as is on file at the Wendell Planning Department. This map and its boundaries shall be incorporated and made part of this Ordinance.

### 1.5 - Compliance or Required Conformance to UDO Provisions

#### B. Exemptions for Bona Fide Farms.

1. As established by House Bill 168 (Session Law 2011-363) and described in G.S. 160D-903, property that is used for bona fide farm purposes within Wendell's Extra Territorial Jurisdiction (ETJ) shall be exempt from the provisions of this ordinance. For the purpose of applying exemptions to bona fide farms, "property" means a single tract of property or an identifiable

portion of a single tract. In order to determine whether a property is being used for bona fide farm purposes, refer to G.S. 160D-903, or see the definition for "Bona Fide Farm" contained in Chapter 19.

2. As permitted under Senate Bill 263 (Session 2011), an accessory building of a "bona fide farm" as defined by G.S. 160D-102(3) within the Town of Wendell's zoning jurisdiction has the same exemption from the building code as it would have under county zoning as provided by 160D-903 of the General Statutes.

#### 2.1 - General Intent

- A. Establishment of Base Districts. In accordance with North Carolina General Statute 160D-703 that sets forth the establishment of zoning regulation by district, the Town of Wendell is hereby divided into various zoning districts that set forth uniform regulations for the development of land within each district.
- C. Overlay Districts. In accordance with North Carolina General Statute 160D-703, the following overlay districts are established. These overlay districts impose additional requirements on properties within one or more underlying base or conditional districts.

#### 3.3 - Additional Standards by Use

- A. **Adult Establishment (M&I).** The purpose of this ordinance shall be to permit the location of adult establishments within the industrial district of the town provided the proposed business adheres to the guidelines established herein.

#### 6.5 - Stormwater Runoff Provisions: Post-Construction Stormwater Ordinance

- B. Authority: The Town of Wendell is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; the municipal Charter of the Town of Wendell; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185, Chapter 160D-925, Stormwater Control [as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)]; [Article 21, Part 6 (Floodway Regulation)]; [Chapter 160D]; as well as Chapter 160D related to statutory authority for planning and regulation of development, including particularly but not limited to G.S. 160D-404 (enforcement), G.S. 160D Article 8 (subdivision), G.S. 160D Article 7 (zoning).

#### 6.7 - Flood Damage Protection Ordinance

- A. Statutory Authorization. The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Chapter 160D-923; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners of the Town of Wendell, North Carolina, does ordain as follows:

#### F. General Provisions.

8. Penalties for Violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Wendell from taking such other lawful action as is necessary to prevent or remedy any violation.

#### 12.2 - Applicability

- D. Per G.S. 160D-908, Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.

#### 13.10 - Nonconforming Plans

- A. Any site specific plan (including but not limited to master plans, preliminary plats, final plats, conditional district plans) for the development of property and/or construction of a building which has received final approval by the Town of Wendell for development and/or construction, but does not conform to this Ordinance, may be developed and/or constructed in accordance with the Ordinance, rules, and regulations, including any conditions imposed upon approval. Any plan approved prior to the adoption of this Ordinance, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this Ordinance. For additional information, please refer to Chapter 15, Administration.

#### 14.2 - Planning Board

The authority to establish a Planning Board for the Town of Wendell is granted under the authority of G.S. 160D-301 & 604.

##### B. Membership and Terms of Office

- 1. The Planning Board shall consist of a total of nine members. In accordance with G.S. 160D-307, the total membership of the Planning Board shall be proportional to the population of residents of the Town of Wendell and residents in the ETJ area. Population shall be determined by best available U.S. Census/GIS Data.

#### 14.3 - Board of Adjustment

The authority to establish a Zoning Board of Adjustment for the Town of Wendell is granted under the authority of G.S. 160D-302.

#### 14.4 - Technical Review Committee

The authority to establish the Technical Review Committee for the Town of Wendell is granted under the authority of G.S. 160D-301 & 803.

#### 15.3 - Administrator

The authority to establish an Administrator for the Town of Wendell is granted under the authority of G.S. 160D-402.

#### 15.14 - Vested Rights

##### A. General Procedures/Establishment of Vesting:

- 1. Pursuant to G.S. 160D-108 and notwithstanding any other provision or amendment, a landowner may apply for approval of a site-specific development plan as defined in the statute that shall entitle said landowner to develop property in accordance with the previously approved plan.

##### B. Approval procedures and approval authority

- 2. Notwithstanding the provisions of 15.14.B.1 above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee, or administrative official other than the Board of Commissioners in order to obtain a zoning vested right, the applicant must request in writing at the time of the application that the application be considered and acted on by the Board of Commissioners

following notice and a public hearing as provided in North Carolina General Statute § 160D-601.

5. Each map, plat, site plan, or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under North Carolina General Statute § 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until \_\_\_\_\_."

C. Duration

3. Upon issuance of a building permit, the expiration provisions of North Carolina General Statute § 160D-1111 and the revocation provisions of North Carolina General Statute § 160D-1115 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

E. Voluntary Annexation

1. A petition for annexation filed with the Town under North Carolina General Statute § 160A-31 or North Carolina General Statute § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to petition has been established under North Carolina General Statute § 160D-108 or North Carolina General Statute § 160A-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be determined.

F. Limitations

1. Nothing in this subchapter is intended or shall be deemed to create any vested right other than those established pursuant to North Carolina General Statute § 160D-108.

G. Repealer

1. In the event that North Carolina General Statute § 160D-108 is repealed, this subchapter shall be deemed repealed and the provisions hereof no longer effective.

## 15.16 - Administrative Appeals

E. Appeals

1. Appeals from the enforcement and interpretation of this Ordinance, and requests for variances shall be filed with the Administrator, who shall transmit all such records to the Board of Adjustment and/or the Board of Commissioners.

## Chapter 19 - DEFINITIONS

### 19.3 - Definitions

**Dwelling** means any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of Article 12 of Chapter 160D of the General Statutes, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

**Existing Development** means those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (b) Having an outstanding valid building permit as authorized by the General Statutes (G.S. 160D-108), or
- (c) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 160D-108).

**Extraterritorial Jurisdiction (ETJ)** means that land lying beyond the municipal limits of the Town of Wendell and within the extraterritorial jurisdiction boundary as delineated on the official zoning map of the Town of Wendell in accordance with G.S. 160D-202. The authority is granted to a locality to exercise zoning powers for a specified distance outside its boundaries. It is intended to protect activities on the edge of communities from being encroached on by incompatible adjacent activities.

SECTION 3. That all laws and clauses of law in conflict herewith are hereby repealed to the extent of said conflict.

SECTION 4. That if this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable.

SECTION 5. That the proposed text amendments to Part I, Subpart A- Charter, Sec. 2.2, Sec. 6.1, Sec 1-2, Sec. 1-17, Sec.1-18, Division 2- Planning Board, Division 3- Board of Adjustment, Sec. 2-335, Chapter 4- Animals, Sec. 12.6, Sec. 18-213, Sec. 26.03, Article III- Trees, Sec. 30-20, Sec. 34-19, Sec. 34-89, Sec. 34-90, Sec. 34-91, Sec 34-93, Sec. 34-94 of the Code of Ordinances and Section 1.3, Section 1.4, Section 1.5, Section 2.1, Section 3.3, Section 6.5, Section 6.7, Section 12.2, Section 13.10, Section 14.2, Section 14.3, Section 14.4, Section 15.3, Section 15.14, Section 15.16 and Section 19.3 the UDO is found to be consistent with Key Principle #9 of the Wendell comprehensive plan and is reasonable because it brings the local ordinances into compliance with applicable North Carolina law..

Key Principle Number 9: "Make development decisions predictable, fair, and cost effective."

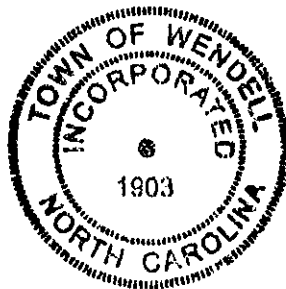
SECTION 6. That this ordinance has been adopted following a duly advertised public hearing of the Town Board and following recommendation by the Planning Board.

SECTION 7. That this ordinance shall be enforced as provided in G.S. 160A-175 or as provided for in the Wendell Town Code.

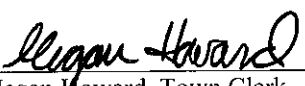
SECTION 8. That this ordinance shall become effective upon its adoption by the Wendell Board of Commissioners.

DULY ADOPTED the 22nd day of February 2021.

(Town Seal)



ATTEST:

  
Megan Howard, Town Clerk

  
Virginia R. Gray, Mayor

APPROVED AS TO FORM:

  
James P. Cauley III, Town Attorney