



# Town of Carrboro

Town Hall  
301 W. Main St.  
Carrboro, NC 27510

## Meeting Agenda Board of Aldermen



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Tuesday, March 24, 2015

7:30 PM

Board Chambers - Room 110

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### A. TOWN HISTORIAN APPLICANT

#### 7:30-8:00

1. **15-0090** Chat with Town Historian Applicant

**PURPOSE:** The purpose of this item is to allow the Board of Aldermen to meet and chat with the applicant for the Town Historian position.

**Attachments:** Attachment A - Nancy Mason - Carrboro Historian Letter of Interest  
Attachment B - A Resolution Creating the Position of Town Historian  
Attachment C - Call for Applications - Town Historian

### B. PUBLIC HEARING

#### 8:00-8:30

1. [15-0053](#) A Public Hearing to obtain comment on implementation of Body Worn Cameras (BWC) by the Carrboro Police Department.

**PURPOSE:** This is a public hearing to receive comments from the public regarding the implantation of Body Worn Cameras by the Carrboro Police.

**Attachments:** [BWC Draft Policy](#)

#### 8:30-9:15

2. [15-0087](#) Public hearing on Land Use Ordinance Text Amendments Relating to Temporary Family Health Care Structures

**PURPOSE:** The purpose of this item is for the Board of Aldermen to consider potential text amendments to the Land Use Ordinance to allow temporary family health care structures as provided for in S.L. 2014-94. A draft ordinance has been prepared. The Board must receive public comments before taking action on the draft ordinance.

**Attachments:** [Attachment A-1 - Consistency Resolution for Ordinance Adoption 3mb](#)  
[Attachment A-2 - Consistency Resolution for Ordinance Denial](#)  
[Attachment B - Draft LUO amendment on temporary health care structures 1-27-15](#)  
[Attachment C - SL2014-94](#)  
[Attachment D](#)  
["Meet the Granny Pod New Zoning Protection for Temporary Family Health Care Structures"](#)  
[Attachment E - Review Comments and Recommendation](#)

**9:15-9:45**

3. [15-0088](#) Public Hearing on Land Use Ordinance Text Amendments Relating to Underground Utility Line Installations

**PURPOSE:** The purpose of this item is for the Board of Aldermen to consider text amendments to the Land Use Ordinance to establish a new use classification and permitting process for underground utility line installations. A draft ordinance has been prepared. The Board must receive public comments before taking action on the amendments.

**Attachments:** [Attachment A-1 - Consistency Resolution for Ordinance Adoption 3mb](#)  
[Attachment A-2 - Consistency Resolution for Ordinance Denial](#)  
[Attachment B - Draft LUO amendment on Underground lines 2-11-15](#)  
[Attachment C-1 NTAAC Proposed Language for Town of Carrboro Land Use Ordinance for Utilities Amendment Request 12-15-2014](#)  
[Attachment C-2 NTAAC Proposed Language for Town of Carrboro Charter re noise ordinance 12-15-2014](#)  
[Attachment D - LUO Excerpts from ART-X & XV](#)  
[Attachment E - Review Comments and Recommendations](#)

## C. OTHER MATTERS

**9:45-10:00**

1. [15-0089](#) Consideration of a Town Code Amendment Relating to Noise Complaints Linked to the Operation or Use of Certain Tools, Machinery, or Equipment

**PURPOSE:** The purpose of this item is for the Board of Aldermen to consider an amendment to the Town Code relating to the enforcement of violations of construction noise. The Board must receive public comments before taking action on this amendment.

**Attachments:** [Attachment A - Town Code Ordinance on reporting violations of construction noise 2-11-15](#)  
[Attachment B - Excerpts from Chapter 5 - General Offenses \(PDF\)](#)  
[Attachment C-1 NTAAC Proposed Language for Town of Carrboro Land Use Ordinance for Utilities Amendment Request 12-15-2014](#)  
[Attachment C-2 NTAAC Proposed Language for Town of Carrboro Charter re noise ordinance 12-15-2014](#)

**D. MATTERS BY TOWN CLERK**

**E. MATTERS BY TOWN MANAGER**

**F. MATTERS BY TOWN ATTORNEY**

**G. MATTERS BY BOARD MEMBERS**

**H. CLOSED SESSION**

1. **15-0091** Closed Session - Personnel Matter and Attorney Client Privilege





# Town of Carrboro

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Carrboro, NC 27510

## Agenda Item Abstract

**File Number:** 15-0090

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**Agenda Date:** 3/24/2015

**File Type:** Abstract

**In Control:** Board of Aldermen

**Version:** 1

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### **TITLE:**

Chat with Town Historian Applicant

**PURPOSE:** The purpose of this item is to allow the Board of Aldermen to meet and chat with the applicant for the Town Historian position.

**DEPARTMENT:** N/A

**CONTACT INFORMATION:** N/A

**INFORMATION:** On September 16, 2014 the Board of Aldermen adopted a resolution establishing the position of the Town Historian and issued a call for applications. The Town Clerk advertised the position and received one letter of interest. The resolution, call for applications, and applicant letter of interest are included as attachments.

**FISCAL & STAFF IMPACT:** Per section 3 of the resolution, the Town Historian shall receive no compensation from the Town but the Town may appropriate funds to pay for costs incurred by the Town Historian in performing his or her official duties, so long as such costs are approved in advance by the Town Manager.

**RECOMMENDATION:** It is recommended that the Board of Aldermen review the applicant letter of interest and discuss any questions with the applicant. If the Board so chooses, the applicant can be appointed to serve as the Town of Carrboro Historian and will serve at the pleasure of the Board. The Board may also choose to reissue the call for applications. However, no action of the Board is required.

October 7, 2014

Town of Carrboro  
Town Clerk's Department  
301 West Main Street  
Carrboro, N.C. 27510

This is sent as a letter of interest for the volunteer position of Town Historian in accordance with the Call for Applications. Please reference the attached resume for an outline of my education and employment background

The Call for Applications states a goal for the position to engage citizens of Carrboro to compile a truthful history of a Town with multiple histories. Obviously, Carrboro has a very rich and multifaceted history that has not been systematically documented. Therefore, a primary undertaking for a Town Historian would include an oral history to further the Town's overall historic preservation objective.

As may be known, oral history is a method of gathering and preserving historical information in spoken form. It consists of recorded interviews obtained under controlled conditions by a trained researcher or interviewer for the purpose of documenting events and opinions not usually available in the written historical record.

Carrboro's oral history project would be a structured activity to retrieve, create and preserve a community history with multiple personalities involving maximum resident participation. The oral history would document:

- Historical background of the Town
- Development and change over time
- Significant (well-known and lesser-known) people, events, problems, solutions, personal concerns and accomplishments.

Citizens would be extensively engaged in the oral history in planning, implementation and presentation stages. The oral history will be a useful participatory community experience with educational, recreational and social value. There appears to be a wealth of untapped information in the form of long term residents who have lived in and been involved with and observed the changes and development of the Town. Their memories, perceptions, and understanding of Town development will be captured and documented.

Initial thoughts on the usage of time of the Town Historian and / or projects to complete include:

1. participation with Town officials in initial planning for development of short-term and long-term historical documentation processes to include an oral history component;

2. assist in project implementation including the following activities:
  - a. A *research* phase to lay the groundwork for the oral history including development of procedures, questionnaire guidelines, the identification of potential interviewees, general research and training of interviewers;
  - b. On-going *interaction* with a full range of community resources to assist in project design and implementation. (At a minimum this would include contact with, and input from, community, political, social, minority, religious groups etc. and regional historical/other resources.)
  - c. An *interview* phase involving on-going interviewer training and conduct and processing of interviews;
  - d. A *presentation* phase to integrate oral history interviews with other visual historical materials in a Town Hall or other appropriate location.

In response to the request to explain how the integrity of factual information would be maintained and for a description of experience with historical writing and/or preservation, I would respectfully refer you to the attached resume.

I would emphasize that the combination of legal and historical training and experience has sharpened my ability to do historical research and to effectively evaluate first hand information with a critical review process. Refined interview techniques would elicit and evaluate interview content. Experience in directing three very different oral history projects—all of which were focused on preserving the undocumented histories (of a medical institution, a significant urban redevelopment effort, and the fading history of a minority North Carolina Town) has enhanced my ability to engage and productively work with diverse populations and values and to apply a critical review process to historical data.

Thank you for your attention and consideration. I would be pleased to respond to additional inquiries and/or provide additional information.

Sincerely,

Nancy O. Mason

**A motion was made by Alderman Gist, seconded by Alderman Chaney, that this resolution be approved:**

A RESOLUTION PROVIDING FOR THE APPOINTMENT BY THE BOARD OF  
ALDERMEN OF A TOWN HISTORIAN

WHEREAS, the Town of Carrboro has a rich history; and

WHEREAS, an understanding of the Town's history facilitates more informed discussions and better decisions regarding current policies and future directions for the Town; and

WHEREAS, the Board of Aldermen recognizes the value of designating a Town Historian in order to acknowledge the importance of and increase the awareness of the Town's history;

NOW THEREFORE, the Carrboro Board of Aldermen resolves:

Section 1. The Board shall appoint an individual to serve at its pleasure as the Town Historian.

Section 2. The Town Historian shall:

- Collect and organize local history materials and cooperate with the Town Clerk in the preservation of historically valuable Town records;
- Represent the Town as its spokesperson on Carrboro's history;
- Advise the Board of Aldermen on the preservation of Town historic sites;
- Work with the Board of Aldermen to establish a safe and protected repository for historical town documents and artifacts donated to the Town;
- Research, write, and make public presentations on aspects of Town history, serving as a resource to the community;
- Advise the Board of Aldermen on historical issues and subjects;
- Serve as a liaison with any Town historical groups, as well as similar groups outside the Town, to encourage cooperation and resource sharing;
- Engage diverse members of the community and its civic organizations in the research, preservation, telling and interpretation of Town history.

Section 3. The Town Historian shall receive no compensation from the Town but the Town may appropriate funds to pay for costs incurred by the Town Historian in performing his or her official duties, so long as such costs are approved in advance by the Town Manager.

Section 4. This resolution shall become effective upon adoption.

This the 16th day of September, 2014

**The motion carried by the following vote:**

**Aye:** Mayor Lavelle, Alderman Haven-O'Donnell, Alderman Chaney, Alderman Seils, Alderman Gist, Alderman Slade and Alderman Johnson

CALL FOR APPLICATIONS  
TOWN OF CARRBORO  
TOWN HISTORIAN APPLICATION

The Town of Carrboro Board of Aldermen is seeking applicants for the newly created volunteer position of Town Historian. If interested please submit a letter of interest to the Board including any specific qualifications and skills that you may have.

In the letter, please explain the following:

- How you will engage the citizens of Carrboro to compile a truthful history of the Town keeping in mind that Carrboro is a town with multiple histories. Personal accounts may be different based upon the storyteller. The Town values the diversity and history of its past and seeks a Town Historian with a similar vision.
- Provide initial thoughts of how your time would be used as Town Historian and/or projects you would like to complete. This may include establishing a repository, ideas for community events, or ways to integrate education and collaboration on Carrboro's history into existing community events
- Explain how you intend to maintain the integrity of factual information and describe any experience you have with historical writing and/or preservation.





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**In Control:** Board of Aldermen

**Version:** 1

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**TITLE:**

A Public Hearing to obtain comment on implementation of Body Worn Cameras (BWC) by the Carrboro Police Department.

**PURPOSE:** This is a public hearing to receive comments from the public regarding the implantation of Body Worn Cameras by the Carrboro Police.

**DEPARTMENT:** Police Department

**CONTACT INFORMATION:** Walter Horton, Chief of Police

**INFORMATION:** The Carrboro Police Department is considering implementation of Body Worn Cameras and is seeking public comment on their use and draft policy (Attachment A).

**FISCAL & STAFF IMPACT:** None

**RECOMMENDATION:** Staff recommends that the Board hear public comment on the implementation of Body Worn Cameras (BWC) and draft policy.



# Carrboro Police Department



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- I. Purpose
- II. Definitions
- III. Body Worn Cameras Procedures
- IV. Supervisor Responsibility
- V. Management of Recordings
- VI. Retention of Recordings
- VII. Review of Recordings

## **I. Purpose**

Establish guidelines for the use, management, storage, and retrieval of audio-visual media recordings from Body Worn Camera Recording systems.

## **II. Definitions**

- A. Body Worn Camera (BWC): A mobile camera that is worn on the uniform to document video, audio, and photographic evidence.
- B. BWC Operator: An officer who has been trained in the operation of mobile digital recording devices installed on the body and the departmental policy regarding such.
- C. Manual Activation: When the Body Worn Camera (BWC) is manually activated to record.
- D. Recording Media: material used to store data, including but not limited to DVD's, CD's and Digital Memory Cards.
- E. Records Management System (RMS): Computer based system for entering, storing, and searching records of the police department.
- F. Video Management Software: Software that manages the access, downloading, viewing, and copying of audio and video recordings and prohibits modification or manipulation of the original file.
- G. Records of Criminal Investigations: Records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction. See NCGS 132-1.4.



# Carrboro Police Department

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- H. Incident Classification: Term used to signify the various methods an authorized user can classify an event that has been recorded and a set retention period has been established, including, but not limited to: Traffic Crash, DWI, K-9 Search, Pursuit, Traffic Stop, Transport, and Use of Force.
- I. Checking Station: A systematic way of stopping and surveying vehicles to check for compliance with NC driver’s license laws.
- J. System Administrator: The Chief of Police’s designee(s) that is responsible for retrieving and downloading of video recordings, and acts as liaison to the Town IT Department.
- K. Tactical Operation: Activities outside the usual law enforcement response. Examples include but are not limited to search warrant service, active shooter response, high risk warrant service, etc.

### III. Body Worn Camera Procedures

- A. Officers will adhere to the procedures listed below when utilizing BWC equipment.
  1. Officers are not authorized to utilize or deploy non-departmental issued BWCs.
  2. Officers will adhere to the procedures listed below when utilizing BWC equipment.
  3. Prior to and throughout each shift, officers will ensure that all components of their BWC equipment are working satisfactorily and will immediately bring any problems to the attention of a supervisor. The officer will also notify the Quarter Master of any malfunctions.
  4. The Field Training Officer will be responsible for the training of new officers on all mobile digital audio/video recording devices.
  5. The Quartermaster will be notified by the Patrol Supervisor if a BWC is damaged, or malfunctioning. The Quarter Master will arrange to have a spare BWC issued to the officer if available.
- B. BWC equipment activation:
  1. All officers issued a BWC will wear the camera on the outside of their



# Carrboro Police Department



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uniform in such a manner that optimal video and audio is achieved. Optimal shall be defined as to show the best vantage point of the recorded interaction.

2. Once recording starts, it must continue until the incident is completed. If for some reason, recording must be stopped, the officer must verbally indicate the reason on the recording before being stopped. This shall also be documented in the written report.
  3. Officers may inform individuals that they are being recorded, but this action is not required on the part of the officer. If an officer is asked if they are recording, the officer is expected to be truthful unless the nature of the law enforcement activity requires a different answer i.e. an undercover operation.
- C. An officer shall turn on the BWC under these circumstances unless the situation at hand prevents activation. If the officer does not activate the BWC during one of these situations, it must be documented:
1. All traffic stops before the officer(s) exits the vehicle.
  2. During Traffic Checkpoints, the BWC will be activated prior to initial contact of the first vehicle during the checkpoint and remain on during the operation. If there is a lull in traffic, the BWC can be turned off but must be reactivated prior to the initial contact of the next vehicle.
  3. K-9 Vehicle Searches and any other K9 utilization that may involve tracking or involvement with a suspect.
  4. Vehicle Searches
  5. Vehicle pursuits as soon as practical but no later than when officer exits the vehicle.
  6. Foot Pursuits
  7. All stops of a person based on reasonable suspicion, i.e. "Terry" Stops.
  8. During any tactical operations the BWC will be activated for pre-planned events i.e. when there is sufficient time to develop a written plan of action. During other tactical operations, a BWC should be used when practical.
  9. Any calls for service when a possible suspect is on scene.



# Carrboro Police Department



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10. When two parties are reported to be involved in a dispute.
11. Any interaction with a person known to the officer to have a history of being confrontational and/or violent.
12. When contact with an individual becomes adversarial after the initial contact in a situation that would not otherwise require recording.
13. Record the actions and/or statements of suspects if the recording may prove useful in the later judicial proceedings. Examples include but are not limited to: field interviews, sobriety performance tests, and confiscation or documentation of evidence.
14. Any situation or incident that the officer, through training and experience, believes should be audibly and visually recorded. If an officer is unsure if activation is required or not the officers default will be to activate the BWC.

**D. Recording in areas with reasonable expectation of privacy**

1. The use of the BWC when entering private property requires a balance between privacy rights and the need for the government intrusion into the space. When practicable, officers may notify people that they are being recorded. If a person with legal authority over the private property in question requests that recording be stopped in areas in which a person has a reasonable expectation of privacy and the situation is not listed in section III C of this policy, the officer may stop the recording. Prior to stopping the recording, the officer must state on the recording the reason for the stop. If the incident is one that requires a report the reason for stopping the BWC will be included in the written report.
2. If an officer is responding to a possible crime or disturbance in progress, the BWC will be activated. If a determination is made that the crime is belated or no longer meets the criteria for recording, the BWC may be deactivated once the situation no longer needs to be recorded. The officer will verbally state the reason for BWC recording cessation on the recording and indicate such in the report of the incident.

**E. If an officer is responding to a belated or general call for service that would not normally be recorded, the BWC does not need to be activated unless the situation changes to one in which recording is allowed.**



# Carrboro Police Department



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F. Cessation of recordings:

Once activated, the BWC should remain on until the incident has concluded. For purposes of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported and all witnesses and victims have been interviewed. Recording may cease if an officer is simply waiting for a tow truck or a family member to arrive, or in other similar situations. If an arrestee is placed in a vehicle with a recording MVR, the BWC may be turned off.

G. Recording not required:

1. Activation of the BWC system is not required when exchanging information with other officers or during breaks, lunch breaks, when not in service, or actively on patrol;
2. Officers shall not record encounters with undercover officers or confidential informants;
3. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room unless the situation meets criteria in section III, C.

H. Surreptitious recording

No member of this department may surreptitiously record a conversation of any other member of this department except with a court order or when authorized by the Chief of Police or the Chief's authorized designee for conducting a criminal or administrative investigation.

I. BWC operators shall document the use of BWC equipment in the appropriate RMS report.



# Carrboro Police Department



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## IV. Supervisor Responsibilities

- A. When an incident occurs that requires the immediate downloading or retrieval of the recorded media (e.g., serious crime scenes, departmental shootings, departmental traffic crashes), a supervisor shall respond to the scene, determine if an immediate download is needed, and ensure that the video footage is downloaded as soon as possible.
- B. When an officer reports a malfunction of BWC equipment to a supervisor, the supervisor will, as soon as is practicable, seek a replacement unit if available and shall ensure that authorized personnel make repairs in a timely manner. If no BWC is available for the officer to use, the officer shall indicate in written reports that no BWC was available at the time of incident.
- C. Supervisors shall conduct quarterly reviews of officers' recordings in order to:
  - 1. Assess officer performance;
  - 2. Assure proper functioning of BWC equipment;
  - 3. Determine if BWC equipment is being operated properly; and
  - 4. Identify recordings that may be appropriate for training. If this footage involves a personnel action according G.S.160A-168, written permission from the officer(s) involved must be received.
- D. Supervisors shall conduct bi-weekly reviews of personnel who are newly assigned BWC equipment in order to ensure compliance with departmental policy. These reviews shall last 30 days. Supervisors shall thereafter conduct quarterly reviews of randomly selected video recoded by their officers.
- E. Minor infractions (not criminal in nature) committed by any member of the Carrboro Police Department and discovered during routine review of recorded material should be viewed as training opportunities; however, depending on the severity of the action the supervisor may take disciplinary actions. Should the behavior or action become habitual after being addressed, the appropriate level disciplinary action will be taken to correct the behavior.



# Carrboro Police Department



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F. Deliberate or unauthorized deletion of recorded media shall result in disciplinary actions up to, and including, termination.

## V. Management of Recordings

A. All recordings on the BWC must be downloaded prior to the end of the officers' tour of duty. Supervisors shall notify administrators of any incidents of unusual importance in a timely manner.

B. Officers shall not attempt to erase, alter or tamper with BWC recordings. Deliberate or unauthorized deletion of recorded media shall result in disciplinary actions up to, and including, termination.

C. BWC upload procedure:

1. BWC video will be uploaded by directly connecting the BWC to a docking station or USB cable to facilitate upload in to the video system management system.

2. Videos will be correctly classified once uploaded to the video management system.

D. Deletion of Recordings

1. No officer shall delete recordings. All recordings will be maintained according to section VI. Retention of Recordings.

## VI. Retention of Recordings

A. Officers shall classify all videos recorded in the appropriate category noted in the system once recording and upload is completed. **Any officer, who intentionally or repeatedly misclassifies a video recording in an effort to avoid disciplinary or criminal investigation, is subject to disciplinary actions up to, and including, termination.**

B. Recordings that are evidentiary in nature will be retained in conformance with the Department of Cultural Resources Retention Schedule adopted by the Town of Carrboro.



# Carrboro Police Department



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C. The retention period for the video will be set based on the following criteria:

### Retention Schedule

TYPE OF INCIDENT	MVR
Equipment Check, Accidental activation	30 Days
Criminal Intelligence/Criminal Investigations	90 Days
Hold for training purposes	90 Days
General calls for service	90 Days
Traffic Stop to include K9 or other vehicle search	180 Days
DWI	180 Days
Custodial Arrest	180 Days
Vehicle or Foot pursuit	180 Days
Hold for review by internal review/complaint	180 Days
Any use of force	180 Days



# Carrboro Police Department



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## D. Legal classifications

1. All recording media, images, and audio are property of the Carrboro Police Department (CPD) and will not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police. Under no circumstances will any member of the CPD make a personal copy of any recorded event. Officers may request a copy of a recording for use in professional training with the written approval from the Chief of Police. This policy shall act as express permission by the Chief of Police for a copy of any recorded event related to a criminal case to be released to the Orange County District Attorney's Office or any other District Attorney's Office having jurisdiction in a recorded criminal matter. Recordings made with this equipment are records of criminal investigations and as such will not be subject to release through North Carolina public records law.

## VII. Review of Recordings

- A. To prevent damage to, or alteration of, the original recorded media, it shall not be copied, viewed, or otherwise inserted into any device not approved by the Chief of Police or his designee. When reasonably possible, a copy of the original media shall be used for viewing (unless otherwise directed by the courts) to preserve the original media.
- B. Recordings may be reviewed in any of the following situations:
  1. For use when officers are preparing reports or statements;
  2. By a supervisor or other designated officer investigating a specific act of officer conduct related to an official investigation such as a personnel complaint, administrative inquiry, or a criminal investigation;
  3. By a supervisor to assess a subordinate officer's performance;
  4. By an officer who is captured on, or referenced in, the video or audio data and reviews and uses such data for any purpose relating to his/her employment unless such material is part of an internal investigation;



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5. By court personnel through proper legal process (court order) or with permission of the Chief of Police or the authorized designee. This policy shall act as express permission by the Chief of Police for a copy of any recorded event related to a criminal case to be released to the Orange County District Attorney's Office or any other District Attorney's Office having jurisdiction in a recorded criminal matter;
  6. By the media by order of a court of competent jurisdiction or with permission of the Chief of Police or the authorized designee.
  7. Recordings may be shown for officer training and development purposes. If the recording is part of a personnel matter, a written waiver from the officer involved must be obtained prior to release of video for training and development purposes.
  8. Any person may request to view recorded materials in which they appear unless such material is criminal intelligence, records of criminal investigations, or evidence in a criminal matter.
  9. When a recording contains a minor, a custodial parent or guardian may request to view the material unless such material is criminal intelligence, records of criminal investigations, or evidence in a criminal matter.
  10. Persons requesting to view aforementioned material will not be allowed to make copies of the material or take pictures of the screen. Access to recorded material under this provision only allows the requester to view the material.
  11. Persons may request access to this material by completing the form entitled "Recorded Material Review Request".
- C. Employees desiring to view any previously uploaded or archived recordings should submit a request in writing (email is appropriate) to the shift supervisor and then forwarded the System Administrator for processing.
- D. No recording may be used or shown for the purpose of ridiculing or embarrassing any employee.
- E. Any video that is evidence in an active internal investigation will only be viewed by the appropriate employees and will not be available for training purposes until after completion of said investigation and upon receipt of written authorization from the involved employee.



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- F. All recordings are subject to be erased after the designated retention period unless a longer retention period has been identified for court or investigative purposes.
- G. An officer, by way of their supervisor, may request a copy of a video or to extend the retention period for court purposes. This request will be in writing from the supervisor (can be through e-mail) to the System Administrator. Any supervisor can request a copy of a video or for the retention period to be extended for evidentiary purposes, internal investigation, or for training purposes. If this footage involves a personnel action according G.S.160A-168, written permission from the officer(s) involved must be received prior to release.
- H. Recordings will only be released to attorneys upon the presentation of a valid order issued by a court of competent jurisdiction or upon approval from the District Attorney. Attorneys must submit a written request to hold recordings until a valid court order issued by a court of competent jurisdiction is received. This written request is good for 30 days upon receipt by the police department.
- I. Officers who need recordings duplicated for court must make the request at least five business days prior to the court date. Exceptions to this requirement will be handled on a case-by-case basis.

DRAFT



# Carrboro Police Department



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DRAFT





# Town of Carrboro

Town Hall  
301 W. Main St.  
Carrboro, NC 27510

## Agenda Item Abstract

**File Number: 15-0087**

**Agenda Date:** 3/24/2015

**File Type:** Abstract

**In Control:** Board of Aldermen

**Version:** 1

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### TITLE:

Public hearing on Land Use Ordinance Text Amendments Relating to Temporary Family Health Care Structures

**PURPOSE:** The purpose of this item is for the Board of Aldermen to consider potential text amendments to the Land Use Ordinance to allow temporary family health care structures as provided for in S.L. 2014-94. A draft ordinance has been prepared. The Board must receive public comments before taking action on the draft ordinance.

**DEPARTMENT:** Planning

**CONTACT INFORMATION:** Christina Moon - 919-918-7325; Nick Herman - 919-929-3905; Mike Brough - 919-929-3905

**INFORMATION:** During its 2014 session, the North Carolina General Assembly adopted S.L. 2014-94 which created G.S. 160A-383.5, a new section of the General Statutes under Chapter 160A: Cities and Towns entitled "Zoning of temporary family health care structures." This new legislation requires municipalities to allow temporary family health care structures "granny pods" to be permitted as an accessory use in residential zoning districts so long as certain criteria are met. The criteria speak to the caretaking relationship between the resident of the primary dwelling on the property and the resident of the health care structure, as well as requirements for the health care structure to be removable, of limited size and in compliance with standard zoning requirements such as setbacks. A copy of the Session Law 2014-94 is provided (Attachment C) along with background information from the UNC-School of Government Coates' Canons Blog (Attachment D).

As a point of reference, the Town currently allows the owners of single family residences, on lots of at least 150 percent of the minimum square footage required per dwelling unit, to have an accessory apartment. The apartment or second dwelling unit may not be larger than twenty-five percent of the gross floor area of the primary residence, nor more than a total of 750 square feet. The temporary family health care structures described in S.L. 2014-94 may be no larger than 300 square feet.

The Town Attorney has prepared a draft ordinance (Attachment B), which, if adopted, would amend Article X of the Land Use Ordinance (LUO), Permissible Uses, in accordance with the state legislation. Temporary family health care structures would be described in a new subsection 15-150 (f), located after the Table of Permissible Uses.

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The draft ordinance was referred to Orange County and presented to the Planning Board at its March 19, 2015 meeting. Comments are provided (Attachment E).

**FISCAL & STAFF IMPACT:** Public hearings involve staff and public notice costs associated with advisory board and Board of Aldermen review. Minimal staff impacts are anticipated in relation to incorporating the proposed amendment.

**RECOMMENDATION:** Staff recommends that the Board of Aldermen consider the resolution finding consistency (Attachment A-1), and the draft ordinance provided in the attachments (Attachment B). .

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S  
REASONS FOR ADOPTING AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND  
USE ORDINANCE

Draft Resolution No.

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO ALLOW A TEMPORARY FAMILY HEALTH CARE STRUCTURE AS AN ACCESSORY USE TO A SINGLE FAMILY DETACHED DWELLING ON RESIDENTIALLY ZONED PROPERTY.

NOW, THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is consistent with *Carrboro Vision 2020* which speaks to providing housing for all of Carrboro's citizens, particularly the following provisions:

6.11 Town policy should accommodate a variety of housing styles, sizes and pricing. It should also address issues of density, funding and rezoning to allow for more non-attached housing, mixed-use development, and communal living options.

6.16 With our growing population of senior citizens, the town should support the creation of more housing that allows our senior citizens to interact fully with the larger community.

Section 2. The Board further concludes that the above described amendment which will conform the provisions of the Land Use Ordinance, with regard to temporary family health care structures, to recent changes in federal and state legislation, is in the public interest.

Section 3. This resolution becomes effective upon adoption.

This the 24<sup>th</sup> day of March 2015.

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S  
REASONS FOR REJECTING AN AMENDMENT TO THE TEXT OF  
THE CARRBORO LAND USE ORDINANCE

Draft Resolution No.

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO ALLOW A TEMPORARY FAMILY HEALTH CARE STRUCTURE AS AN ACCESSORY USE TO A SINGLE FAMILY DETACHED DWELLING ON RESIDENTIALLY ZONED PROPERTY.

NOW, THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is not consistent with Town plans and policies.

Section 2. The Board concludes that its rejection of the above described amendment is reasonable and in the public interest because existing regulations are appropriate.

Section 3. This resolution becomes effective upon adoption.

This the 24th day of March 2015.

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO ALLOW A  
TEMPORARY FAMILY HEALTH CARE STRUCTURE AS AN ACCESSORY USE TO A  
SINGLE FAMILY DETACHED DWELLING ON RESIDENTIALLY ZONED PROPERTY

\*DRAFT 1-27-2015-\*

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Section 15-150 (Accessory Uses) is amended by adding the following new subsection (f):

(f) On property that is residentially zoned (SEE Section 15-135), a temporary family health care structure shall be regarded as an accessory use to a single-family detached dwelling to the extent authorized and in accordance with the provisions of G.S. 160A-383.5 (S.L. 2014-94).

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2014-94  
HOUSE BILL 625**

**AN ACT RELATING TO ZONING PROVISIONS FOR TEMPORARY HEALTH CARE STRUCTURES.**

The General Assembly of North Carolina enacts:

**SECTION 1.** Part 3 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

**"§ 153A-341.3. Zoning of temporary health care structures.**

A county exercising powers under this Article shall comply with G.S. 160A-383.5."

**SECTION 2.** Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-383.5. Zoning of temporary health care structures.**

(a) The following definitions apply in this section:

- (1) Activities of daily living. – Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
- (2) Caregiver. – An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first or second degree relative of the mentally or physically impaired person for whom the individual is caring.
- (3) First or second degree relative. – A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
- (4) Mentally or physically impaired person. – A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
- (5) Temporary family health care structure. – A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

(b) A city shall consider a temporary family health care structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings.

(c) A city shall consider a temporary family health care structure used by an individual who is the named legal guardian of the mentally or physically impaired person a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings in accordance with this section if the temporary family health care structure is placed on the property of the residence of the individual and is used to provide care for the mentally or physically impaired person.

(d) Only one temporary family health care structure shall be allowed on a lot or parcel of land. The temporary family health care structures under subsections (b) and (c) of this section shall not require a special use permit or be subjected to any other local zoning requirements beyond those imposed upon other authorized accessory use structures, except as otherwise provided in this section. Such temporary family health care structures shall comply

with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure.

(e) Any person proposing to install a temporary family health care structure shall first obtain a permit from the city. The city may charge a fee of up to one hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars (\$50.00). The city may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The city may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the city of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation, and annual renewal of the doctor's certification.

(f) Notwithstanding subsection (i) of this section, any temporary family health care structure installed under this section may be required to connect to any water, sewer, and electric utilities serving the property and shall comply with all applicable State law, local ordinances, and other requirements, including Part 5 of this Article, as if the temporary family health care structure were permanent real property.

(g) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

(h) Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used, or may be reinstated on the property within 60 days of its removal, as applicable.

(i) The city may revoke the permit granted pursuant to subsection (e) of this section if the permit holder violates any provision of this section or G.S. 160A-202. The city may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.

(j) Temporary family health care structures shall be treated as tangible personal property for purposes of taxation."

**SECTION 3.** G.S. 130A-250 is amended by adding a new subdivision to read:

"(14) Temporary family health care structures under G.S. 153A-341.3 or G.S. 160A-383.5."

**SECTION 4.** G.S. 131D-2.1(10) reads as rewritten:

"(10) Multiunit assisted housing with services. – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

- a. Emergency response system;
- b. Charges for services offered;
- c. Limitations of tenancy;
- d. Limitations of services;

- e. Resident responsibilities;
- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, and temporary family health care structures, as defined in G.S. 160A-383.5, are exempt from the regulatory requirements for multiunit assisted housing with services programs."

**SECTION 5.** G.S. 160A-442(2) reads as rewritten:

"(2) "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, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose. Temporary family health care structures, as defined in G.S. 160A-383.5, shall be considered dwellings for purposes of this Part, provided that any ordinance provision requiring minimum square footage shall not apply to such structures."

**SECTION 6.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

**SECTION 7.** This act becomes effective October 1, 2014, and applies to temporary family health care structures existing on or after that date. No county or city may impose a fee as authorized by Section 1 and Section 2 of this act on any temporary family health care structure existing on that date.

In the General Assembly read three times and ratified this the 25<sup>th</sup> day of July, 2014.

s/ Tom Apodaca  
Presiding Officer of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 11:55 a.m. this 1<sup>st</sup> day of August, 2014

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## Coates' Canons Blog: Meet the Granny Pod: New Zoning Protection for Temporary Family Health Care Structures

By David Owens

Article: <http://canons.sog.unc.edu/?p=7846>

This entry was posted on September 10, 2014 and is filed under Affordable Housing & Minimum Housing Codes, Land Use & Code Enforcement, Planning, Zoning

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Extended families residing together were commonplace in the early 20th century. In the 1920s most zoning ordinances allowed rooms in single family homes to be rented to boarders. It was also not uncommon at that time for single family homes to have an accessory dwelling unit. These came in a variety of settings – a basement, attic, or garage apartment, a “mother-in-law” suite, or, in larger homes, separate quarters for domestic help.

Single-family zoning districts began to be made more restrictive after World War II. Charlotte’s 1951 zoning ordinance, for example, allowed accessory dwelling units in its “Residence 1” zoning district, but only for servants’ quarters in the rear yard. In language that conjures images from “[The Help](#),” the Charlotte ordinance of that time expressly prohibited garage apartments for rent unless they were “occupied only by servants in the employ of the occupants of the main residence.” Over the following decades even this limited permitted use of accessory dwelling units in single-family zoning districts was eliminated in many cities and counties.

In recent years there has been a renewed interest in permitting some accessory dwelling units in single-family neighborhoods. Advocates suggest more permissive regulations for accessory dwelling expand the range of housing choices, provide more affordable housing, facilitate aging-in-place, and allow modest increases in residential density while retaining the essential character of urban neighborhoods. Opponents worry about over-crowding, traffic, and impacts on neighborhood character and property values. Click [here](#) for a 2013 story on the Raleigh city council’s consideration of the issue and [here](#) for planning staff and planning board background information on that discussion.

A new North Carolina statute may spark renewed attention to the general issue of accessory dwellings by mandating zoning approval for a limited and very specific type of accessory residence – a “temporary family health care structure.” Allowing an accessory dwelling unit to accommodate on-site care-giving is not a new idea. Some North Carolina counties have allowed a second dwelling to be temporarily placed on a lot already occupied by a principal dwelling if necessary to accommodate an on-site care-giver. This often requires a special use permit and the accessory structure is usually limited to a manufactured home that must be removed when the need for care-giving ends. Other local governments have relaxed single-family zoning restrictions more generally to allow accessory apartments in some residential zoning districts.

While the decision to allow accessory dwellings is clearly within the discretion of local elected officials, there are limits to the conditions that can be imposed. For example, Wilmington amended its zoning to allow garage apartments as an accessory use in a single-family zoning district, provided that either the principal or the accessory dwelling was occupied by the owner of the property. The court of appeals in [City of Wilmington v. Hill](#), 189 N.C. App. 173, 657 S.E.2d 670 (2008), held that the zoning statutes grant authority to regulate land use, but not land ownership, so the court invalidated the owner occupancy requirement.

A statute enacted in 2014 adds a new element to land use regulation of accessory dwellings in North Carolina. The new law, [S.L. 2014-94](#), creates G.S. 160A-383.5 to require zoning approval of “temporary family health care structures.” The law becomes effective October 1, 2014 and applies to both cities and counties.

This law is modeled on a Virginia statute enacted in 2010. A Salem, Virginia minister developed an idea for a modular dwelling that could be placed on the lot of a family care-giver to provide temporary housing for an impaired person. He envisioned these as an alternative to nursing home placement for the impaired person. He worked with economic development staff at Virginia Tech to develop a prototype, but learned many zoning ordinances prohibited placement of an

accessory dwelling on the lot, even on a temporary basis. The 2010 Virginia statute was adopted to eliminate these zoning barriers by requiring local governments to permit these structures, which have come to be known as “granny pods.” Click [here](#) for a 2010 story on his idea, [here](#) for a 2012 video story, and [here](#) for more on his company.



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statute similarly requires city and county zoning to permit “temporary family health care provided there is a qualifying need, the structure qualifies and a set of regulatory

**Qual**

G.S. 1 temporary structures that will house a single “mentally or physically impaired person.” The statute defines these to be North Carolina residents who require assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation, transferring, toileting, and eating). The impairment must be certified in writing by a physician licensed in North Carolina.

Also, the caregiver must be at least 18 years old and must be a first or second degree relative of the impaired person (a spouse, parent, grandparent, child, grandchild, aunt, uncle, nephew, or niece). A legal guardian of the impaired person also qualifies.

**Qualifying Structure**

The structures covered by this law are limited to transportable residential units. The unit must be assembled off-site and built to the standards of the State Building Code (thus a manufactured home built to HUD standards would not qualify). It must be no more than 300 gross square feet. It must not be placed on a permanent foundation.

**Regulatory Provisions**

Cities and counties must permit qualified structures as an accessory use in any single-family residential district if it is placed on a lot owned or occupied by a qualified care-giver and the accessory structure is occupied only by the impaired person. The city or county is prohibited from requiring a special use permit.

The accessory structure must comply with all setbacks and any maximum floor area ratio limits that apply to the primary residential structure. The structure may be required to connect to any water, sewer, and electric utilities serving the property. Only one accessory temporary family care structure is allowed per lot. Other zoning requirements that are applicable to all other accessory structures in that zoning district may also be applied. No signage regarding the presence of the structure is allowed. The structure must be removed within 60 days after care-giving on the site ceases.

The city or county may require a permit to be obtained prior to installation. A fee of up to \$100 may be charged. An annual renewal fee of up to \$50 is also allowed. Evidence of compliance may be required as part of the permitting and annual permit renewal, including an annual renewal of the doctor’s certification of impairment. The city or county may make periodic inspections at times convenient to the caregiver to assure on-going compliance. Enforcement action, including permit revocation, is authorized if any of these requirements are violated.

Unlike the statutory protection for family care homes in [G.S. 168-23](#), this statute does not exempt temporary family health care structures from private deed restrictions or covenants. Thus any applicable non-governmental restrictions may still be enforced by the neighbors.

The structure is exempted from health and sanitation regulations regarding establishments providing food and lodging. It is also not required to comply with the social service licensing and regulatory provisions related to adult care homes.

The structure is to be treated as real property for zoning and building code purposes, but it is treated as personal property for tax purposes.

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## Conclusions

The extent to which accessory dwelling units should be allowed in single-family residential zoning districts is an important topic for local discussion. Reconciling concerns about affordable housing, density, neighborhood compatibility, design standards, property value impacts, and changing social needs warrant careful consideration as zoning ordinances are modernized. While updating ordinances to reflect this new law, local government may well want to revisit and discuss their overall policies on accessory dwellings in predominately single-family neighborhoods.

Local zoning cannot be more restrictive than the standards discussed above for temporary family health care structures and should be promptly amended to incorporate this mandate. Whether a broader review is done or not, in the particular circumstances noted above the General Assembly has mandated that local governments accommodate those wishing to provide on-site care for an impaired family member.

## Links

- [www.imdb.com/title/tt1454029/?ref\\_=ttmd\\_ph\\_tt1](http://www.imdb.com/title/tt1454029/?ref_=ttmd_ph_tt1)
- [raleighpublicrecord.org/news/2013/02/14/backyard-cottages-get-a-thumbs-down-from-city-council/](http://raleighpublicrecord.org/news/2013/02/14/backyard-cottages-get-a-thumbs-down-from-city-council/)
- [raleighudo.com/blog/latest-information-about-proposed-udo-regulations-accessory-dwelling-units](http://raleighudo.com/blog/latest-information-about-proposed-udo-regulations-accessory-dwelling-units)
- [appellate.nccourts.org/opinions/?c=2&pdf=2329](http://appellate.nccourts.org/opinions/?c=2&pdf=2329)
- [www.ncleg.net/Sessions/2013/Bills/House/PDF/H625v4.pdf](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H625v4.pdf)
- [www.washingtonpost.com/wp-dyn/content/article/2010/05/05/AR2010050503074.html?wpisrc=nl\\_most](http://www.washingtonpost.com/wp-dyn/content/article/2010/05/05/AR2010050503074.html?wpisrc=nl_most)
- [www.cbsnews.com/news/granny-pods-inside-housing-alternative-for-aging-loved-ones/](http://www.cbsnews.com/news/granny-pods-inside-housing-alternative-for-aging-loved-ones/)
- [www.medcottage.com/](http://www.medcottage.com/)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=168-23](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=168-23)

# ORANGE COUNTY PLANNING & INSPECTIONS DEPARTMENT

Craig N. Benedict, AICP, Director

Administration  
(919) 245-2575  
(919) 644-3002 (FAX)  
www.orangecountync.gov



131 W. Margaret Lane  
P O Box 8181  
Hillsborough,  
North Carolina, 27278



## TRANSMITTAL DELIVERED VIA EMAIL

March 2, 2015

Christina Moon, AICP  
Planning Administrator  
Town of Carrboro  
301 W. Main St.  
Carrboro, NC 27510

### **SUBJECT: Joint Planning Review of Proposed Ordinance Amendments**

Dear Tina:

Thank you for the opportunity to review the following Land Use Ordinance amendments received by us February 20, 2015 and proposed for town public hearing on March 24, 2015:

- *An Ordinance to Allow Temporary Family Health Care Structures as an Accessory Use.*
- *An Ordinance to Require a Special Use Permit for Underground Electric and Gas Utility Lines.*

We have reviewed the amendments and find no inconsistency with the adopted *Joint Planning Area Land Use Plan*.

If you have any questions or need additional information, please let me know.

Sincerely,

Perdita Holtz, AICP  
Planning Systems Coordinator



# TOWN OF CARRBORO

## PLANNING BOARD

301 West Main Street, Carrboro, North Carolina 27510

### RECOMMENDATION

THURSDAY, MARCH 19, 2015

### LAND USE ORDINANCE TEXT AMENDMENT RELATING TO TEMPORARY FAMILY HEALTH CARE STRUCTURES

Motion was made by A. Cohen and seconded by A. Whittemore that the Planning Board recommends that the Board of Aldermen approve the draft ordinance.

**VOTE:**

AYES: ( ) 8

ABSENT/EXCUSED: ( ) 1 Theresa Watson

NOES: ( ) 0

ABSTENTIONS: ( )

Associated Findings

By a unanimous show of hands, the Planning Board membership also indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment.

Motion was made by A. Cohen and seconded by C. Anderson that the Planning Board of the Town of Carrboro finds the proposed text amendment is consistent with Carrboro Vision 2020 which speaks to providing housing for all of Carrboro's citizens, particularly the following provisions:

6.11 Town policy should accommodate a variety of housing styles, sizes and pricing. It should also address issues of density, funding and rezoning to allow for more non-attached housing, mixed-use development, and communal living options.

6.16 With our growing population of senior citizens, the town should support the creation of more housing that allows our senior citizens to interact fully with the larger community.

Furthermore, the Planning Board of the Town of Carrboro finds the proposed text amendment, which will conform the provisions of the Land Use Ordinance, with regard to temporary family health care structures, to recent changes in federal and state legislation, is in the public interest.

**VOTE:**

AYES: ( ) 8

ABSENT/EXCUSED: ( ) 1 Theresa Watson

NOES: ( ) 0

ABSTENTIONS: ( )

  
(Chair)

3/19/15  
(Date)





# Town of Carrboro

Town Hall  
301 W. Main St.  
Carrboro, NC 27510

## Agenda Item Abstract

**File Number: 15-0088**

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**Agenda Date:** 3/24/2015

**File Type:** Abstract

**In Control:** Board of Aldermen

**Version:** 1

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### **TITLE:**

Public Hearing on Land Use Ordinance Text Amendments Relating to Underground Utility Line Installations

**PURPOSE:** The purpose of this item is for the Board of Aldermen to consider text amendments to the Land Use Ordinance to establish a new use classification and permitting process for underground utility line installations. A draft ordinance has been prepared. The Board must receive public comments before taking action on the amendments.

**DEPARTMENT:** Planning

**CONTACT INFORMATION:** Christina Moon - 919-918-7325; Nick Herman - 919-929-3905; Mike Brough - 919-929-3905

**INFORMATION:** The Town has received a request for text amendments from the Northern Transition Area Advisory Commission (NTAAC) relating to underground utility installation (Attachment C-1). Per Section 15-321, Initiation of Amendments, a draft ordinance amending the Land Use Ordinance was prepared and presented to the Board of Aldermen and a date for this public hearing designated.

Section 15-146 of the Land Use Ordinance (LUO), Table of Permissible Uses, outlines a number of utility-type uses such as above-ground utility structures or facilities, and underground lines. Such uses are further classified based on the physical size of the facility's components as well as the extent, or coverage, of the area for which the utility is designed to serve. A draft ordinance has been prepared that, if adopted, would separate the existing use classification 17.400, Underground Utility Lines, into two sub classifications: 17.410 Electric Power Lines and Gas Lines, and 17.420 Other Underground Lines (Attachment B). The draft ordinance further indicates that the new use 17.410 shall require a conditional use permit in the C, WR, and B-5 districts and a special use permit in all other zoning districts. Use 17.420 shall continue to require the type of permit currently required for all 17.400 uses (see Attachment D-1 for excerpt of current Table of Permissible Uses).

The NTAAC has also requested an amendment to the Town Code relating to construction noise (Attachment C-2). An ordinance amending the Town Code is included as a separate agenda item in this packet.

The draft ordinance amending the LUO was referred to Orange County and presented to the joint advisory board review meeting on March 19, 2015. Comments and recommendations from Orange County, the Planning Board and NTAAC are provided (Attachment E). Neither the Transportation Advisory Board (TAB) nor the

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Environmental Advisory Board (EAB) had quorums present. Members of the TAB present, Kurt Stolka, Colleen Barclay and Sarah Moore, offered the following informal comments on the draft ordinance:

The amendment appears to create a process for addressing citizen concerns related to utility line installations that is unproductive. Rather the environmental regulations should be strict enough to prevent utility companies from doing anything untoward.

The Town should strengthen regulations for utility companies instead of requiring public hearings install involve Town staff and Aldermen.

Could there be language in the amendment to separate the two issues brought forth in tonight's meeting?

Citizens having no voice and no recourse when it comes to utility companies and installations.

Environmental issues.

·Perhaps the process should involve neighborhood meetings between utility companies and neighbors rather than a formal CUP and public hearings.

The EAB had few members attend; those present declined to make any comments.

**FISCAL & STAFF IMPACT:** Public hearings involve staff and public notice costs associated with advisory board and Board of Aldermen review. Minimal cost is estimated in relation to updating the Land Use Ordinance.

**RECOMMENDATION:** Staff recommends that the Board of Aldermen consider adopting the resolution finding consistency (Attachment A-1), and the draft ordinance to the Land Use Ordinance provided as (Attachment B).

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S  
REASONS FOR ADOPTING AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND  
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WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO ALLOW A TEMPORARY FAMILY HEALTH CARE STRUCTURE AS AN ACCESSORY USE TO A SINGLE FAMILY DETACHED DWELLING ON RESIDENTIALLY ZONED PROPERTY.

NOW, THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is consistent with *Carrboro Vision 2020* which speaks to providing housing for all of Carrboro's citizens, particularly the following provisions:

6.11 Town policy should accommodate a variety of housing styles, sizes and pricing. It should also address issues of density, funding and rezoning to allow for more non-attached housing, mixed-use development, and communal living options.

6.16 With our growing population of senior citizens, the town should support the creation of more housing that allows our senior citizens to interact fully with the larger community.

Section 2. The Board further concludes that the above described amendment which will conform the provisions of the Land Use Ordinance, with regard to temporary family health care structures, to recent changes in federal and state legislation, is in the public interest.

Section 3. This resolution becomes effective upon adoption.

This the 24<sup>th</sup> day of March 2015.

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S  
REASONS FOR REJECTING AN AMENDMENT TO THE TEXT OF  
THE CARRBORO LAND USE ORDINANCE

Draft Resolution No.

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO ALLOW A TEMPORARY FAMILY HEALTH CARE STRUCTURE AS AN ACCESSORY USE TO A SINGLE FAMILY DETACHED DWELLING ON RESIDENTIALLY ZONED PROPERTY.

NOW, THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is not consistent with Town plans and policies.

Section 2. The Board concludes that its rejection of the above described amendment is reasonable and in the public interest because existing regulations are appropriate.

Section 3. This resolution becomes effective upon adoption.

This the 24th day of March 2015.

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REQUIRE A  
SPECIAL USE PERMIT FOR UNDERGROUND ELECTRIC AND GAS UTILITY LINES

\*Draft 2-11-2015\*

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Section 15-146 (Table of Permissible Uses) of the Carrboro Land Use Ordinance is amended by dividing use classification 17.400 (“Underground Utility Lines”) into two subclassifications: “17.410 Electric Power Lines and Gas Lines” and “17.420 Other Underground Lines” The Table of Permissible Uses is further amended to indicate that (i) underground lines that fall within new use classification 17.420 shall continue to require the type of permit currently required for all 17.400 uses, and (ii) underground lines that fall within new use classification 17.410 shall require a conditional use permit in the C, WR, and B-5 districts and a special use permit in all other zoning districts.

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective thirty days after adoption.

**Language for Town of Carrboro Land Use Ordinance for Utilities Amendment Request**

1) What the LUO presently allows:

Page 185 of LUO. Allows Underground Utility Lines as well as above ground utility facilities to be permitted with a Zoning Permit with use classification #17.400.

2) What the proposed amendment would allow:

Require Underground Utility Lines associated with gas and electric utilities as well as above ground utility facilities for such utilities to be permitted with either a Conditional Use or Special Unit Permit with use classification #17.400.

3) Reasons for proposed amendment:

a) **The right to a public hearing:** Property owners should be afforded the right to present their concerns, legal and equitable, about the construction of such facilities and underground utilities to the Board of Aldermen or Board of Adjustment in a quasi-legal hearing. Staff should not have the discretion to keep such property owner concerns from public, legal consideration. Any legal concern can be presented by staff, including the town attorney, at such a hearing. Carrboro should follow the lead of Orange County in requiring the permitting process.

b) **The right to have a point of contact:** When multi-million dollar companies that can involve other such companies as contractors and subcontractors bring their resources to such developments, the individual citizen is at a severe disadvantage in responding to their actions and failure to follow local, state and federal regulations. The layers of different types of employees with different companies, coupled with the many permits, Federal and State, create a rubric's cube of complexity that is beyond the abilities and expertise of the average property owner. The property owner should be able, at a minimum, to ask the BOA or BOA for the right to have the town staff and the board manage the project and serve as a point of entry responsible for concerns about the development.

b) **Significant risk from the utility:** These types of utilities, especially natural gas, pose a significant risk to not only the adjoining property owners but also to neighboring residential property owners and drivers of vehicles passing on roads next to the facilities. Under a zoning permit, there is no way for the town to guarantee and protect the safety of property owners and their property and families due to its stance that it cannot insist a safety and evacuation plan should a pipeline leak or rupture. On behalf of citizens, the town should be able to, for instance, inspect the pipes.

c) **Significant impact without regulation on the environment:** Such projects have the potential to have significant impact on tree preservation, wetlands and stormwater management

that affects the property of adjoining property owners. For most other development, the town has crafted over many years of hard work a very carefully written set of stormwater regulations. The property owner should be allowed, at the very least, to petition the BOAldermen or BOAAdjustment to require those regulations be applied to mitigate the impacts of predicted storm events to slow the rate of runoff, prevent erosion, and prevent sediment from entering streams and waterways. Screening from large clearing of easement could be addressed as well.

d) **Control of construction impact:** The property owner should have right to petition either Board for the identification of a staff department which will respond to concerns about these projects in terms of the temporary or permanent impact of noise, dust, odors and other nuisances disrupting quality of life, particularly in a residential zone, and that are described in part in Article XI of the LUO, that may or may not be addressed with standards in the LUO. These issues would also potentially involve questions about establishing clear hours of operation in accordance with the LUO and following them as well as providing the expected general construction schedule and giving advance notice of equipment/material mobilization.

e) **Enforcing Orange County's Special Use Permit provisions:** Where Orange County has established special use permit provisions, the property owner should be able to ask that the town require the applicant to abide by them, where the owner, though not a Carrboro citizen, is subject to the LUO because of their location within Carrboro's planning jurisdiction. These provisions would include an emergency action plan, preservation of historical/cultural resources in the area of the pipeline or other utility, communication of all conditions to contractors and subcontractors, ensure any crews act toward property owners in a neighborly, courteous manner, applying for and receiving all required State and Federal permits, and abiding by the conditions/operational parameters as denoted on any approved site plan.

**Language for Town of Carrboro Charter Amendment Request**

1) What the Charter presently allows:

Page of Section 5-21 on page 5-11 states a violation of Section 5-11 and 5-12 shall constitute a misdemeanor and is punishable under NCGS 14-4.

2) What the proposed amendment would allow:

Add a (f) that states that **the town manager or designated staff member shall be the person to be informed by a complainant of any alleged violations of Sec. 5-12 (4), which regulates noise from various construction tools, machinery or equipment during certain hours of the work day for property within 300 feet of a residentially occupied dwelling. The town shall be responsible for notifying the appropriate law enforcement officials for enforcement of Sec. 5-12(4).**

3) Reasons for proposed amendment:

Se. 5-21 has been interpreted by Town staff to require a citizen and/or individual property owner to notify the police of any violation of 5-11 and 5-12. This interpretation imposes on said person, particularly if their property is located adjacent to the person responsible for such noise infraction, an uncomfortable responsibility. This burden is increased where the responsibility for the noise violation is committed by a for-profit corporation and/or its contractors and subcontractors whose employees are present on land near or on the property of the property owner. The larger the corporation, the heavier the burden as well as the possibility of the threat of stoppage fees or other legal action can be.

DESCRIPTION	R-2	R-3	R-7.5	R-SIR-10	R-15	R-20	RR	B-1 (C)	B-1 (G)	B-2	B-3	B-3-T	B-4	M-1	M-2	CT	C	W-R	B-5	WM-3	O	O/A
14.300 Mining or quarrying operations, including on-site sales of products															S							
14.400 Reclamation landfill		Z	Z	Z	Z	Z	Z						Z	Z	Z							
<b>15.000 Miscellaneous Public and Semi-Public Facilities</b>																						
15.100 Post Office								C	C		C	C	C	C	C	C						
15.200 Airport							C		S				S	S								C
15.300 Sanitary landfill							C							C								
15.400 Military reserve, National Guard centers														Z								
15.500 Recycling materials collection operations																						
15.510 Using collection facilities other than motor vehicles									Z				Z	Z	Z							
15.520 Aluminum recycling using motor vehicles									S				S	S	S							
15.600 Public utility service complex																			C			
15.700 Cable Television Signal Distribution Center								S	S	S	S		S	S	S	S					S	S
<b>15.800 Town-owned and/or Operated Facilities and Services</b>																						
15.810 Town-owned and/or Operated Public Parking Lot								Z	Z	Z	Z	Z	Z	Z	Z	Z				Z		Z
15.820 All other town-owned and/or operated facilities and services	Z	Z	Z	Z	Z	Z	Z		Z		Z	Z		Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>16.000 Dry Cleaner, Laundromat</b>																						
16.100 With drive-in windows											C	C	C									C
16.200 Without drive-in windows									Z		S	S	Z			Z			C			S
<b>17.000 Utility Facilities</b>																						
17.100 Neighborhood	S	S	S	S	S	S	S		S	S	S	S	S	S	S	S	C	C	C			S
17.200 Community or regional														S	S		C		C			S
17.300 Cable Television Satellite Station							S				S	S	S	S	S	S					S	S
17.400 Underground Utility Lines	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	C	C	Z	C	Z	Z
<b>18.000 Towers and Related Structures</b>																						
18.100 Towers and antennas fifty feet tall or less	Z	Z	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	Z	Z	C	Z			Z
18.200 Towers and antennas attached thereto that exceed 50 feet in height, and that are not regarded as accessory to residential users under 15-150(c)(5)							C	C			C	C	C	C	C	C			C	C	C	C
18.300 Antennas exceeding 50 feet in height attached to structures other than towers, [other than accessory uses under 15-150(c)(5)]	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
18.400 Publicly-owned towers and antennas of all sizes that are used in the provision of public safety services									ZC													
<b>19.000 Open Air Markets and Horticultural Sales</b>																						
19.100 Open air markets (farm and craft markets, flea markets, produce markets)								ZC	ZC	ZC	S	S		S		S					S	S
19.200 Horticultural sales with outdoor display									ZC	ZC	S	S		S		S					S	S
19.300 Seasonal Christmas or pumpkin sales								Z	Z	Z	Z	Z	Z	Z	Z						Z	Z
<b>20.000 Funeral Homes</b>													Z	Z								
<b>21.000 Cemetery and Crematorium</b>																						
21.100 Town-owned cemetery	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
21.200 All other cemeteries							S							Z	Z		C	C	C			
21.300 Crematorium														Z	Z							
<b>22.000 Day Care</b>																						
22.100 Child Day Care Home	ZZ	Z	Z	Z	Z	Z	Z	S	S	Z	S	S				Z		Z			S	S
22.200 Child Day Care Facility	S	S	S	S	S	S	S	Z	Z	Z	Z	Z	Z	Z		Z		C	C		Z	Z
22.300 Senior Citizens Day Care, Class A	S	S	S	S	S	S	S		Z	Z	Z	Z	Z	Z		Z		C	C		Z	Z
22.400 Senior Citizens Day Care, Class B	S	S	S	S	S	S	S	Z	Z	S	Z	Z	S	Z		S					Z	Z

## ARTICLE XV

### WATER AND WASTEWATER, OUTDOOR LIGHTING, AND MISCELLANEOUS UTILITIES (REWRITTEN 4/20/10)

#### PART III: MISCELLANEOUS UTILITIES (AMENDED 4/20/10)

##### Section 15-244 Electric Power.

Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- (1) If the use is not a subdivision and is located on a lot that is served by an existing power line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.
- (2) If the use is a subdivision or is not located on a lot served by an existing power line, or a substantial internal distribution system will be necessary, then the electric utility company must review the proposed plans and certify to the town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

##### Section 15-245 Telephone Service.

Every principal use and every lot within a subdivision must have available to it a telephone service cable adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- (1) If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is necessary.
- (2) If the use is a subdivision or is not located on a lot served by an existing telephone line or a substantial internal distribution system will be necessary, then the electric utility company must review the proposed plans and certify to the town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

##### Section 15-246 Underground Utilities.

(a) All electric power lines, (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters or capacitors which may be pad mounted), telephone, gas distribution, and cable television lines in subdivisions developed after the effective date of this chapter shall be placed underground in accordance with the specifications and policies of the respective utility companies and located in accordance with Appendix C, Standard Drawing No. 6 or No. 7.

(b) Whenever an unsubdivided development is hereafter constructed on a lot that is undeveloped on the effective date of this chapter, then all electric power, telephone, gas distribution, and cable television lines installed to serve the development site outside of a previously existing public street right-of-way shall be placed underground in accordance with the specifications and policies of the respective utility companies. **(AMENDED 1/22/85)**

**Section 15-247 Utilities To Be Consistent With Internal and External Development.**

(a) Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby development, such utility facilities (e.g., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

(b) All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

**Section 15-248 As-Built Drawings Required.**

(a) Whenever a developer installs or causes to be installed any utility line in any public right-of-way, the developer shall, as soon as practicable after installation is complete, furnish the town with a copy of a drawing that shows the exact location of such utility lines. Such drawings must be certified as accurate by the utility company. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.

(b) If any utility in any right-of-way is installed by a utility company, the company shall maintain accurate as-built drawings and shall make these available to the town upon request.

**Section 15-249 Fire Hydrants.**

(a) Every development, subdivided or unsubdivided, that is served by a public water system shall include a system of fire hydrants sufficient to provide adequate fire protection for the buildings located or intended to be located within such development. **(AMENDED 4/27/82)**

(b) The presumption established by this ordinance is that to satisfy the standard set forth in subsection (a), fire hydrants must be located so that every building within the development is not more than 500 feet from a hydrant. However, the fire chief may authorize or require a deviation from this standard if, in his professional opinion, another arrangement more satisfactorily complies with the standard set forth in subsection (a).

(c) The fire chief shall determine the precise location of all fire hydrants, subject to the other provisions of this section. In general, fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter.

(d) All hydrants shall have two 2½ inch hose connections and one 4½ inch hose connection. The 2½ inch hose connection shall be located at least 21½ inches from the ground level. All hydrant threads shall be national standard threads.

(e) Water lines that serve hydrants shall be at least six inch lines, and unless no other practicable alternative is available, no such lines shall be dead-end lines.

(f) When hydrants are required under this section to be located within a public street right-of-way, the installation of such hydrants by the developer shall constitute an offer of dedication of such hydrant to OWASA, and the town and OWASA shall thereafter deal with such hydrant in the same manner as other hydrants located within public rights-of-way within the town. The developer or his successor shall be responsible for ensuring that such hydrant is properly maintained and kept in good working order, and that any costs associated with providing water to such hydrant are paid so that the hydrant can at all times serve its intended function. The developer or his successor may arrange with OWASA or any other entity to have such hydrants properly maintained, but ultimate responsibility for compliance with this section remains on the developer or his successor. **(AMENDED 5/10/83)**

(g) Fire hydrants required under this section shall be installed and in working condition, subject to OWASA approval, prior to framing of any buildings in each phase. **(AMENDED 11/26/85)**

**Section 15-250 Screening of Dumpsters (AMENDED 5/26/81)**

(a) Every development that, under Chapter 11 of the Town Code, is or will be required to provide one or more dumpsters for solid waste collection shall provide sites for such dumpsters that are:

- (1) Located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way; and
- (2) Constructed according to specifications established by the public works director to allow for collection without damage to the development site or the collection vehicle.

(b) All such dumpsters shall be screened if and to the extent that, in the absence of screening, they would be clearly visible to:

- (1) Persons located within any dwelling unit on residential property other than that where the dumpster is located.
- (2) Occupants, customers, or other invitees located within any building on non-residential property other than that where the dumpster is located, unless such other property is used primarily for purposes permitted exclusively in an M-1 or M-2 zoning district.
- (3) Persons traveling on any public street, sidewalk, or bikeway within the Town of Carrboro.

(c) When dumpster screening is required under this section, such screening shall be constructed, installed, and located to prevent or remedy the conditions requiring the screening.

# ORANGE COUNTY PLANNING & INSPECTIONS DEPARTMENT

Craig N. Benedict, AICP, Director

Administration  
(919) 245-2575  
(919) 644-3002 (FAX)  
www.orangecountync.gov



131 W. Margaret Lane  
P O Box 8181  
Hillsborough,  
North Carolina, 27278



## TRANSMITTAL DELIVERED VIA EMAIL

March 2, 2015

Christina Moon, AICP  
Planning Administrator  
Town of Carrboro  
301 W. Main St.  
Carrboro, NC 27510

### **SUBJECT: Joint Planning Review of Proposed Ordinance Amendments**

Dear Tina:

Thank you for the opportunity to review the following Land Use Ordinance amendments received by us February 20, 2015 and proposed for town public hearing on March 24, 2015:

- *An Ordinance to Allow Temporary Family Health Care Structures as an Accessory Use.*
- *An Ordinance to Require a Special Use Permit for Underground Electric and Gas Utility Lines.*

We have reviewed the amendments and find no inconsistency with the adopted *Joint Planning Area Land Use Plan*.

If you have any questions or need additional information, please let me know.

Sincerely,

Perdita Holtz, AICP  
Planning Systems Coordinator



# TOWN OF CARRBORO

## Planning Board

*301 West Main Street, Carrboro, North Carolina 27510*

# R E C O M M E N D A T I O N

THURSDAY, MARCH 19, 2015

## LAND USE ORDINANCE TEXT AMENDMENT RELATING TO UNDERGROUND UTILITY LINE INSTALLATIONS

Motion was made by Clinton and seconded by Poulton that the Planning Board makes no recommendation on the draft ordinance.

It is the opinion of the Planning Board that this issue requires further information regarding what utilities would be affected. In the broader sense, would this amendment only affect cross county transmission lines or does the Utility Facility use classification included utilities in neighborhoods? Are there other cross county gas line easements that may be affected by this decision or is the easement west of Old NC 86 the only one?

**VOTE:**

AYES: (8) Foushee, Adamson, Clinton, Poulton, Hunt, Davis, Whittemore, Cohen

ABSENT/EXCUSED: (1) Watson

NOES: (0)

ABSTENTIONS: (0)

  
(Chair)

3/19/15  
(Date)



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**301 West Main Street, Carrboro, North Carolina 27510**

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# R E C O M M E N D A T I O N

THURSDAY, MARCH 5, 2015

## LAND USE ORDINANCE TEXT AMENDMENT RELATING TO UNDERGROUND UTILITY LINE INSTALLATIONS

Motion was made by Amy Jeroloman and seconded by Moore that the NTAAC recommends that the Board of Aldermen adopt the draft ordinance.

**VOTE:**

AYES: (3)

ABSENT/EXCUSED: (X)

NOES: (0)

ABSTENTIONS: (0)

**Associated Findings**

By a unanimous show of hands, the NTAAC membership also indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment.

Motion was made by Jeroloman and seconded by Moore that the NTAAC of the Town of Carrboro finds the proposed text amendment to be consistent with the findings from *Carrboro Vision 2020* particularly the following provisions under Section 2.0, Development:

2.0 The interests of all members of the community, including property owners, neighbors, and other interested citizens should be considered when making development decisions.

2.43 Carrboro should strongly encourage the electric utilities to put their lines underground to allow for full canopy coverage.

The NTAAC furthermore finds that the above described amendment is reasonable and in the public interest because it will require a public hearing for certain public utility installations, which do not currently require a public hearing and will thereby provide more opportunities for public input on such installations.

**VOTE:**

AYES: (3)

ABSENT/EXCUSED: (X)

NOES: (0)

ABSTENTIONS: (X)

Amy Jeroloman 3/19/2015  
(Chair) (Date)



# Town of Carrboro

Town Hall  
301 W. Main St.  
Carrboro, NC 27510

## Agenda Item Abstract

**File Number:** 15-0089

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**Agenda Date:** 3/24/2015

**File Type:** Abstract

**In Control:** Board of Aldermen

**Version:** 1

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### **TITLE:**

Consideration of a Town Code Amendment Relating to Noise Complaints Linked to the Operation or Use of Certain Tools, Machinery, or Equipment

**PURPOSE:** The purpose of this item is for the Board of Aldermen to consider an amendment to the Town Code relating to the enforcement of violations of construction noise. The Board must receive public comments before taking action on this amendment.

**DEPARTMENT:** Planning

**CONTACT INFORMATION:** Christina Moon - 919-918-7325; Nick Herman - 919-929-3905; Mike Brough - 919-929-3905

**INFORMATION:** The Town has received a request for a text amendment from the Northern Transition Area Advisory Commission (NTAAC) relating to underground utility installation (Attachment C-1), which has been presented for the Board's consideration as part of a separate agenda item. The NTAAC has also requested an amendment to the Town Code relating to construction noise (Attachment C-2). An ordinance amending the Town Code has been prepared (Attachment A), which, if adopted, would provide an opportunity for citizens to file alleged violations of Subsection 5-12(4) to the Police Department or to the Town Manager. Subsection 5-12(4), speaks to noise related to construction. The provisions of the Town Code apply only within the Town limits.

**FISCAL & STAFF IMPACT:** Minimal staff impact associated with updating Town Code.

**RECOMMENDATION:** Staff recommends that the Board of Aldermen consider the draft ordinance amending the Town Code provided as (Attachment A).

AN ORDINANCE AMENDING THE TOWN CODE TO PROVIDE THAT COMPLAINTS REGARDING ALLEGED VIOLATIONS OF THE TOWN'S ORDINANCE REGULATING CONSTRUCTION NOISE MAY BE FILED WITH THE TOWN MANAGER OR THE MANAGER'S DESIGNEE OR WITH THE POLICE DEPARTMENT

\*Draft 2-11-2015\*

THE CARRBORO BOARD OF ALDERMEN ORDAINS:

Section 1. Section 5-21 of the Carrboro Town Code (which establishes penalties and remedies for enforcement of the ordinance provisions set forth in Chapter 5) is amended by adding a new subsection (f) to read as follows:

(f) Complaints regarding alleged violations of the provisions of Subsection 5-12(4) (which deal with construction noise) may be filed with the police department or with the town manager or the manager's designee (other than a member of the police department). Complaints filed with the manager or the manager's designee shall be referred to the police department. The police department shall investigate such complaints and take such action as is warranted by the results of that investigation.

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

## GENERAL OFFENSES

## Article I - Housing Discrimination Prohibited

- Section 5-1 Definitions
- Section 5-2 Housing Discrimination Prohibited
- Section 5-3 Specific Discriminatory Practices
- Section 5-4 Housing Discrimination by Banks
- Section 5-5 Exemptions
- Sections 5-6 through 5-10 Reserved

## Article II - Miscellaneous

- Section 5-11 Noise Generally
- Section 5-12 Particular Noise
- Section 5-12.1 Motor Vehicle Noises
- Section 5-13 Discharge of Firearms and Air Rifles
- Section 5-14 Operation of Public Enterprise Without Franchise
- Section 5-15 ~~Curfew for Minors~~ (Repealed 9/18/07)
- Section 5-15 Limitation on Campaign Contributions for Town Offices
- Section 5-16 Public Urination and Defecation Prohibited
- Section 5-17 Begging or Soliciting Alms by Intimidation
- Section 5-18 Consumption of Malt Beverages or Unfortified Wine on Public Property and Possession of Open Containers of Malt Beverages or Unfortified Wines on Public Property Prohibited (Amend. 5/7/13)
- Section 5-19 Fences Required Around Outdoor Pools (Amend. 7/1/97)
- Section 5-20 ~~Limitation on Use of Designated Right-of-Way~~ (Amend. 11/20/07, Repealed 11/22/11)
- Section 5-20.1 Application of Nutrients to Two Acres or More of Land Area
- Section 5-21 Penalties and Remedies

## Article III - Water Conservation Restrictions

- Section 5-22 Purpose
- Section 5-23 Definitions
- Section 5-24 Waster Waste Prohibited
- Section 5-25 Year Round Requirements: Exterior Use
- Section 5-26 Year Round Requirements: Interior Use
- Section 5-27 Year Round Policy and Practice
- Section 5-28 Determination by OWASA of a Water Supply Shortage or Emergency
- Section 5-29 Required Actions Under Water Supply Shortage or Emergency Conditions

## Article IV – Illicit Discharges Into and Connections to Storm Sewer System

- Section 5-30 Purpose
- Section 5-31 Definitions
- Section 5-32 Illicit Discharges Prohibited
- Section 5-33 Illicit Connections Prohibited
- Section 5-34 Inspections
- Section 5-35 Enforcement

## Article II

## MISCELLANEOUS OFFENSES

Section 5-11 Noise Generally

No person may authorize or cause the emission from any property or source under his control any noise that is both:

- (1) Sufficiently loud to frighten or pose a danger to the health of or seriously disturb any person who:
  - a. if the noise emanates from a source located on private premises, is located on other premises (including other dwelling units or rented premises located on the same tract of land), or (Amend. 4/27/82)
  - b. if the noise emanates from a street or other public property, is located on private property or the street or other public property, and
- (2) Louder, or of greater duration, or otherwise more disturbing than is reasonably necessary for the performance of some lawful public or private function, enterprise, operation, or activity.

Section 5-12 Particular Noise (Amend. 11/16/93)

The following are declared to be illustrations of noises prohibited under the foregoing section, and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (1) The playing of any radio, television, tape recorder, phonograph, or similar electronic device or any musical instrument so as to disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, theater, library or other similar place of assembly.
- (2) The use of any drum, loudspeaker, or other amplification instrument or device for the purpose of attracting attention by the creation of noise to any performance, show, ale, display, advertisement of merchandise, or other commercial venture.
- (3) Any party or assembly of persons in a dwelling unit or on residential premises producing loud and raucous noise after 11:00 p.m. that tend to disturb the comfort, quiet, or repose of persons in other dwelling units or on other residential premise. The person in possession of the premises where such a part or assembly of persons takes place shall be deemed responsible for the emission of loud and raucous noises under this subdivision. (Amend. 4/27/82)
- (4) The operation or use of any of the following tools, machinery, or equipment, when such operation or use takes place (i) outside of a fully enclosed structure; and (ii) within 300 feet of a residentially occupied structure that is not in the possession of the party responsible for the noise at issue; and (iii) after sunset on any day or

before 7:00 a.m. on any day except Sunday and before 12:00 noon on Sunday.  
 However, this prohibition shall not apply when work must take place on an emergency basis for health or safety reasons, or when work is undertaken within a public street right-of-way by (i) a utility pursuant to an encroachment agreement, (ii) the town, or (iii) the North Carolina Department of Transportation. (Amend. 1/16/2001)

- (a) Earth moving or clearing power equipment.
- (a) Chain saws, brush cutters, wood chippers, or similar power equipment.
- (a) Power saws
- (a) Power driven hammers or jackhammers.
- (5) The barking, howling, whining, crying, crowing, or other noise making of any animal that occurs essentially unabated for a period of at least five minutes on at least three occasions during the hours between 11:00 p.m. and 7:00 a.m. (Amend. 9/24/02)

#### Section 5-12.1 Motor Vehicle Noises (Amend. 11/16/93)

The following are illustrations of noises, produced in connection with the operation or use of motor vehicles, that are prohibited under Section 5-11 and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (1) The blowing of a horn on any motor vehicle except when the horn is used as a warning device.
- (2) The operation of any motor vehicle without a muffler or with a muffler that is so defective or so designed that the vehicle emits an unusually loud noise.
- (3) The operation of any motor vehicle so as to create unnecessary and unusual noise through the screeching of tires or racing of engines.
- (4) The operation or use of a motor vehicle with amplified sound produced by a radio, tape player, compact disc player or other soundmaking device or instrument within the motor vehicle such that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle.

#### Section 5-13 Discharge of Firearms and Air Rifles

(a) Subject to subsection (b), no person may discharge any pistol, rifle, shotgun, or other gun or any air pistol, slingshot or any like instrument used to eject a pellet or projectile within the town limits.

(b) Subsection (a) shall not apply to private citizens acting in justifiable defense of persons or property or pursuant to the lawful directions of a police officer nor to police officers acting in the lawful performance of their duties.

- (4) Coring and aerification.
- (5) Application rates of nitrogen, phosphorus, potassium, and/or iron in pounds per square foot, including adjustments for steeper slopes and areas near drainageways (streams, ditches, swales, and runoff conveyances) and impervious surfaces.
- (6) Timing of application.
- (7) Recycling of grass clippings.
- (8) Type of spreader (gravity or centrifugal).
- (9) Name and contact information of applier.
- (10) Reference document(s) used to develop the plan

Records shall be kept and updated annually to document the actual implementation of these components. Nutrient quantities stored and applied shall be documented via sales receipts or similar records.

(f) Landowners and other individuals applying nutrients to areas less than two acres in size are encouraged to adopt manage practices to reduce the risk of surface water impacts and apply nutrients at rates recommended by the North Carolina Cooperative Extension Service.

#### Section 5-21 Penalties and Remedies.

(a) A violation of any of the provisions of this chapter, other than those set forth in Article III, shall constitute a misdemeanor, punishable as provided in G.S. 14-4.

(b) A violation of any of the provisions of this chapter, other than Section 5-15, shall subject the offender to a civil penalty of \$25.00 for the first offense, \$50.00 for the second offense within a 30-day period, and \$100.00 for the third or any additional offense that occurs within any 30-day period. A violation of the provisions of Section 5-15 shall subject the offender to a civil penalty in the amount by which the contribution exceeds \$250.00. If a person fails to pay this penalty within 10 days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of debt. (Amend. 11/18/08, 3/3/09)

(b1) A violation of the provisions of Article IV of this chapter shall subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00). In determining the amount of the civil penalty assessment, the administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable: (Amend. 11/18/08)

- (1) The degree and extent of harm to the natural resources of the town, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The cost to the violator or others of rectifying the damage;
- (4) The amount of money saved by the violator by noncompliance;

- (5) Whether the violation was committed willfully or intentionally, negligently, or as the result of an unforeseeable or unavoidable accident;
  - (6) Whether the violator promptly ceased the violation upon notice by the town and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;
  - (7) The prior record of the violator in complying or failing to comply with the provisions of Article IV of this chapter;
  - (8) The cost to the town of the enforcement procedures;
  - (9) Whether the civil penalty is levied for a single day's violation or a single event or whether it is levied on a daily basis for a continuing violation, as authorized under subsection (d) below. Civil penalties levied on a daily basis may cumulatively exceed the \$5,000.00 cap set forth in this subsection.
- (c) The town may seek to enforce this chapter through any appropriate equitable action.
- (d) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.
- (e) The town may seek to enforce this chapter by using any one or a combination of the foregoing remedies.

**Language for Town of Carrboro Land Use Ordinance for Utilities Amendment Request**

1) What the LUO presently allows:

Page 185 of LUO. Allows Underground Utility Lines as well as above ground utility facilities to be permitted with a Zoning Permit with use classification #17.400.

2) What the proposed amendment would allow:

Require Underground Utility Lines associated with gas and electric utilities as well as above ground utility facilities for such utilities to be permitted with either a Conditional Use or Special Unit Permit with use classification #17.400.

3) Reasons for proposed amendment:

a) **The right to a public hearing:** Property owners should be afforded the right to present their concerns, legal and equitable, about the construction of such facilities and underground utilities to the Board of Aldermen or Board of Adjustment in a quasi-legal hearing. Staff should not have the discretion to keep such property owner concerns from public, legal consideration. Any legal concern can be presented by staff, including the town attorney, at such a hearing. Carrboro should follow the lead of Orange County in requiring the permitting process.

b) **The right to have a point of contact:** When multi-million dollar companies that can involve other such companies as contractors and subcontractors bring their resources to such developments, the individual citizen is at a severe disadvantage in responding to their actions and failure to follow local, state and federal regulations. The layers of different types of employees with different companies, coupled with the many permits, Federal and State, create a rubric's cube of complexity that is beyond the abilities and expertise of the average property owner. The property owner should be able, at a minimum, to ask the BOA or BOA for the right to have the town staff and the board manage the project and serve as a point of entry responsible for concerns about the development.

b) **Significant risk from the utility:** These types of utilities, especially natural gas, pose a significant risk to not only the adjoining property owners but also to neighboring residential property owners and drivers of vehicles passing on roads next to the facilities. Under a zoning permit, there is no way for the town to guarantee and protect the safety of property owners and their property and families due to its stance that it cannot insist a safety and evacuation plan should a pipeline leak or rupture. On behalf of citizens, the town should be able to, for instance, inspect the pipes.

c) **Significant impact without regulation on the environment:** Such projects have the potential to have significant impact on tree preservation, wetlands and stormwater management

that affects the property of adjoining property owners. For most other development, the town has crafted over many years of hard work a very carefully written set of stormwater regulations. The property owner should be allowed, at the very least, to petition the BOAldermen or BOAdjustment to require those regulations be applied to mitigate the impacts of predicted storm events to slow the rate of runoff, prevent erosion, and prevent sediment from entering streams and waterways. Screening from large clearing of easement could be addressed as well.

d) **Control of construction impact:** The property owner should have right to petition either Board for the identification of a staff department which will respond to concerns about these projects in terms of the temporary or permanent impact of noise, dust, odors and other nuisances disrupting quality of life, particularly in a residential zone, and that are described in part in Article XI of the LUO, that may or may not be addressed with standards in the LUO. These issues would also potentially involve questions about establishing clear hours of operation in accordance with the LUO and following them as well as providing the expected general construction schedule and giving advance notice of equipment/material mobilization.

e) **Enforcing Orange County's Special Use Permit provisions:** Where Orange County has established special use permit provisions, the property owner should be able to ask that the town require the applicant to abide by them, where the owner, though not a Carrboro citizen, is subject to the LUO because of their location within Carrboro's planning jurisdiction. These provisions would include an emergency action plan, preservation of historical/cultural resources in the area of the pipeline or other utility, communication of all conditions to contractors and subcontractors, ensure any crews act toward property owners in a neighborly, courteous manner, applying for and receiving all required State and Federal permits, and abiding by the conditions/operational parameters as denoted on any approved site plan.

**Language for Town of Carrboro Charter Amendment Request**

1) What the Charter presently allows:

Page of Section 5-21 on page 5-11 states a violation of Section 5-11 and 5-12 shall constitute a misdemeanor and is punishable under NCGS 14-4.

2) What the proposed amendment would allow:

Add a (f) that states that **the town manager or designated staff member shall be the person to be informed by a complainant of any alleged violations of Sec. 5-12 (4), which regulates noise from various construction tools, machinery or equipment during certain hours of the work day for property within 300 feet of a residentially occupied dwelling. The town shall be responsible for notifying the appropriate law enforcement officials for enforcement of Sec. 5-12(4).**

3) Reasons for proposed amendment:

Se. 5-21 has been interpreted by Town staff to require a citizen and/or individual property owner to notify the police of any violation of 5-11 and 5-12. This interpretation imposes on said person, particularly if their property is located adjacent to the person responsible for such noise infraction, an uncomfortable responsibility. This burden is increased where the responsibility for the noise violation is committed by a for-profit corporation and/or its contractors and subcontractors whose employees are present on land near or on the property of the property owner. The larger the corporation, the heavier the burden as well as the possibility of the threat of stoppage fees or other legal action can be.