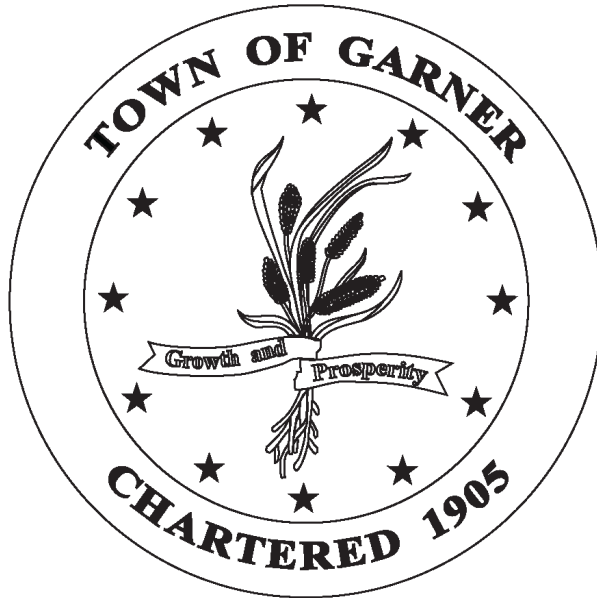


TOWN OF GARNER



Town Council Work Session

June 30, 2020
6:00 p.m.

Garner Town Hall
900 7th Avenue
Garner, NC 27529

**Town of Garner
Work Session Agenda
June 30, 2020**

The Council will meet in a Work Session at 6:00 p.m. in the Council Chambers located at 900 7th Avenue.

- A. CALL MEETING TO ORDER/ROLL CALL: Mayor Ken Marshburn
- B. ADOPTION OF AGENDA
- C. PRESENTATIONS
- D. DISCUSSION/REPORTS

- 1. Adoption and Use of Legislative Conditional Zoning.....Page 3
Presenter: Jeff Triezenberg, Planning Director

With the adoption of state laws reorganizing and streamlining the enabling statutes for planning and zoning, local governments must bring their zoning and subdivision ordinances (in the Town of Garner – our Unified Development Ordinance) into compliance with the newly created NCGS §160D no later than July 1, 2021. This discussion focuses on the implications of Conditional Use Rezoning no longer being allowed; how to employ the use of permitted Conditional Zoning; and how to best define separate use of said Conditional Zoning and Special Use Permits.

Action: Consider authorizing Agreement to move forward with next step of a public hearing

- 2. GAHS MOU Agreement.....Page 13
Presenter: Rodney Dickerson, Town Manager

Review contract between the Town of Garner and Garner Area Historical Society for operation of the historic depot as a museum. Amend Town Ordinance to allow for the sale and consumption of wine and beer in and around the Historic Garner Depot Museum.

Action: Consider approving contract and Alcohol Amendment to go on future agenda

- 3. Animal Control Ordinance.....Page 30
Presenter: Joe Binns, Interim Chief of Police

Recommended changes to Chapter 3 - Animals and Fowl of the Code of the Town of Garner. We recommend changes to sections dealing with nuisance animals (Remove Sec. 3-15, Add Sec. 3-16) and dangerous animals (Sec. 3-17) as well as penalties for those violations.

Action: Consider approving changes to the Ordinance

- 4. Extension of COVID-19 Pay.....Page 68
Presenter: BD Sechler, Human Resources Director

COVID-19 pay was approved for our sworn police officers and GVFR firefighters through June 30, 2020. We have since learned that through the CARES Act, Wake County will reimburse the Town for 75% of the costs going forward. As a result, we recommend continuing the practice of providing hazard pay until Wake County discontinues its EOC or Council determines it should end.

Action: Consider our recommendation to continue hazard pay beyond June 30, 2020

- 5. Review Draft Job Description and Recruitment Process for Town Attorney.....Page 69
Presenter: Matt Roylance, Asst. Town Manager-Operations

The Town has been operating with an interim Town Attorney since Bill Anderson retired in late 2019. Council has indicated they are ready to fill this position with a full-time employee rather than a contract position as was the previous practice. A draft job description is attached for Council's review and discussion, along with an outline of the recruitment process. If Council concurs after this discussion, the creation of the Town Attorney position will be included on the July 7, 2020, meeting agenda for formal action.

Action: Discussion and feedback on the draft job description and recruitment process.

E. MANAGER REPORTS

F. COUNCIL REPORTS

G. ADJOURNMENT

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: June 30, 2020		
Subject: Adoption and Use of Legislative Conditional Zoning		
Location on Agenda: Discussion		
Department: Planning		
Contact: Jeff Triezenberg, AICP, GISP; Planning Director		
Presenter: Jeff Triezenberg, AICP, GISP; Planning Director		
Brief Summary: With the adoption of state laws reorganizing and streamlining the enabling statutes for planning and zoning, local governments must bring their zoning and subdivision ordinances (in the Town of Garner – our Unified Development Ordinance) into compliance with the newly created NCGS §160D no later than July 1, 2021. This discussion focuses on the implications of Conditional Use Rezoning no longer being allowed; how to employ the use of permitted Conditional Zoning; and how to best define separate use of said Conditional Zoning and Special Use Permits.		
Recommended Motion and/or Requested Action: Agreement to move forward with next step of a public hearing.		
Detailed Notes: Next steps in Text Amendment process: 1) Public Hearing for public input 2) Referral to Planning Commission for additional input 3) Council decision as part of Old Business		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JST	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

TO: Honorable Mayor Marshburn and Town Council Members

FROM: Jeff Triezenberg, AICP, GISP; Planning Director

SUBJECT: *Adoption and Use of Legislative Conditional Zoning*

DATE: June 30, 2020

BACKGROUND:

Due Date – With the adoption of state laws reorganizing and streamlining the enabling statutes for planning and zoning, local governments must bring their zoning and subdivision ordinances (in the Town of Garner – our Unified Development Ordinance) into compliance with the newly created NCGS §160D no later than **July 1, 2021**.

Quasi-Judicial Conditional Use Zoning No Longer Allowed – For many years now, local governments have employed the use of similar, but different, review processes for allowing the local decision-making body to consider a site plan as part of their decisions to rezone property:

- Conditional Use Zoning – a partial quasi-judicial process that tries to combine a regular rezoning request (legislative decision) with a special use permit (quasi-judicial decision).
- Conditional Zoning – a singular process that remains only as a legislative decision.

In the early years, Conditional Use Zoning was the only method employed as there was specific statutory authority for both general rezoning and special use permits. It was thought that just combining the two processes into one would be fairly straightforward, but it has resulted in procedural complications and questionable practices:

1. No ex-parte communication outside of the public hearing is allowed.
 - Having appointed citizen boards weigh in on quasi-judicial matters is frowned upon because it happens outside of the public hearing and not all members are witnesses qualified to provide competent professional material evidence.
 - Restricts the decision-making board’s ability to have a discussion of any kind involving anyone except staff outside the public hearing.
2. Special Use Permit and General Rezoning workflows do not match as exhibited in the following bullets.

- Special Use Permits: Staff Review → Advisory Board → Public Hearing with Decision
- Re-zoning: Staff Review → Public Hearing → Referral to Advisory Board → Decision

Due to the Special Use Permit being the more restrictive process, that is the process that must be utilized. However, that process omits the Council’s preferred method of being able to refer a zoning matter to an advisory board such as the Planning Commission. It also has the unintended consequence of complicating public involvement. State statutes require public notice for a public hearing within a prescribed time frame. By having the public hearing LAST, the notice period does not allow for the notices to be mailed prior to the meeting date of the Planning Commission. While the Planning Commission is generally considered a technical advisory body, they do have the ability to hear questions from the public and seek answers on their behalf similar to staff and the Town Council.

In the 1980’s, cities like Charlotte (further from the media sphere of Raleigh) simply began to require a site plan as part of a legislative zoning process and called it “Conditional Zoning” to distinguish it from a general rezoning request. Although not expressly allowed by general statute at the time, it gained in popularity with other local governments and some developers until it was finally granted specific statutory authority in the 2000’s. Many communities have since switched their processes, but today, any holdouts – like Garner – are now required to make the switch as Conditional USE Zoning will now be expressly removed from statutory authority. All re-zonings, regardless of whether they include site plans or not, will now follow the same process which avoids the legal issues and complications discussed earlier.

Staff Review → Public Hearing → Referral to Advisory Board → Decision

Conditional Zoning has the added benefit of being able to be specified as a required review process in the Use Table. Currently, many of the uses identified for Special Use Permit review by the Use Table were marked as such to ensure that a proposal would come before the Council regardless of the developer’s wishes regarding zoning review. However, it does still complicate public input (which is largely considered inadmissible in a quasi-judicial setting). Therefore, it is generally understood that Special Use Permits should only be employed for those uses a community considers to be the most egregious in terms of its effects of the public’s health, safety and general welfare. Where site design issues are the primary concern for ensuring compatibility (as opposed to just the use in general), a conditional zoning may now be employed.

PROPOSED AMENDMENTS:

With this background in mind, Town staff would recommend the following changes to the Town’s Use Table as part of an upcoming amendment package for compliance with NCGS §160D (these changes do not affect overall permissibility of uses and only calls out recommendations for changing certain required Special Use Permit [S] reviews to a new Conditional Zoning [C] review highlighted in yellow. Current Special Use Permit reviews

recommended to remain as such are highlighted in green). When reviewing this table, staff would also recommend that it be kept in mind that legislative discussions have much more leeway in terms of the reasons for potential denial; whereas quasi-judicial decisions should only be denied on specific findings that one of the identified special use permit criteria has not been met. While the distinction may seem subtle, staff finds it important as many lawsuits in the zoning realm fall into violations of procedure often resulting from the more complex quasi-judicial reviews.

Note: The following pages ensure that the header rows are included at least once on each page. The formatting in Microsoft Word has presented some challenges for property table presentation that staff hopes to have resolved in upcoming reports.

USE		RESIDENTIAL DISTRICTS									NON-RESIDENTIAL DISTRICTS								
P = Permitted by right		P* = Permitted subject to standards									S = Special use permit required								
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
RESIDENTIAL																			
Household Living (see 5.2D.1)	Single-Family Detached	P*	P*	P*	P*	P*	P*			P*								6.1 & 6.8	
	Residential Cluster	P*	P*	P*	P*	P*		P*	P*									6.3	
	Two-Family Dwelling							P*	P*									6.2	
	Townhouse							P*	P*		P*	P*	P*					6.5	
	Condominium							P*	P*		P*	P*	P*					6.5	
	Multifamily (triplex and higher, including Apartment)							P*	P*										6.2
	Upper-Story Residential										P*	P*	P*		P				5.3A.5
Household Living (see 5.2D.1)	Manufactured Home (Class A Unit Only)	P*																6.7.B	
	Manufactured Home Park or Subdivision						P*											6.6	
	Single-Family Residential Subdivision	P*	P*	P*	P*	P*													
	Modular Home	P*	P*	P*	P*	P*	P*			P*								6.8	
	Security or Caretaker's Quarters														P	P	P		
Group Living (see 5.2D.2)	Family Care Home	P	P*	P*	P*	P*		P*	P*	P*								5.3A.1	
	Group Care Home	P*	P*	P*	P*	P*		P*	P*	P*								5.3A.1	
	Intermediate Care Home	P*	P*	P*	P*	P*		P*	P*	P*								5.3A.2	
PUBLIC, CIVIC AND INSTITUTIONAL																			
Community Service (see 5.2E.1)	Community Center	S	S	S	S	S	S	S	S		S	S	S	S	S				
	Library, Museum, Art Gallery, Art Center										P	P	P	P	P				
	Other Community Service							S	S		S	S	S	S	S				
	Civil, Service Fraternal Clubs, Lodges and Similar Uses	S									S	S	S	S	S				
Day Care (see 5.2E.2)	Adult Day Care									P*	P*		P*	P*	P*			5.3B.3	
	Child Day Care (up to 3 as home occupation)	P*	P*	P*	P*	P*	P*	P*	P*	P*								5.3B.3	

Day Care (see 5.2E.2)	Family Child Day Care (up to 8 in-home)	P*	P*	P*	P*	P*	P*													5.3B.3	
	Day Care Center											P*	P*		P*	P*	P*				5.3B.3
Educational Facilities and Services (see 5.2E.3)	Business School, College or University Satellite in Single Building													P*	P*	P	P	P			5.3B.1
USE		RESIDENTIAL DISTRICTS										NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards										S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes			
	College / University												P	P	P						
	School, Public or Private	S	S	S	S	S		S	S				S							5.3B.7	
	Trade/Vocational										S	S	S	S	S	S	S			5.3B.9	
	Music / Dance / Art Instruction										P	P	P	P	P						
Funeral Home and Crematorium										P		P	P	P	P					5.3F	
Government Facilities (see 5.2E.4)	Ambulance Service, Rescue Squad, Police or Fire Station	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	P				
	Government, Utility Facility with Outdoor Storage														S		S				
	Government Office										S	S	S	S	S						
	Prison, Jail, Detention Facility																S	S			
Health Care (see 5.2E.5)	Continuing Care, Retirement Facility							S	S				S							5.3B.10	
	Hospice							P	P				P	P							
	Hospital											S	S	S						5.3B.11	
	Ambulatory Health & Emergency Care Facility												S	S						5.3B.11	
	Medical Clinic												P	P	P	P					
	Mental Health Facility													P	P						
Institutions (see 5.2E.6)	Group Care Facility													P	P						
	Handicapped Institution													P	P						
	Intermediate Care Institution													P	P						
	Nursing Care Institution													P	P	P					

USE		RESIDENTIAL DISTRICTS								NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
Parks and Open Space (see 5.2E.7)	Cemetery	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			5.3B.2	
	Public Park, Swimming Pool, Tennis Court, Golf Course	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		
Passenger Terminal (see 5.2E.8)	Bus Passenger Terminal														S	S	S		
	Taxicab or Limousine Operations or Facility														S	S	P		
Religious Institution (see 5.2E.9)		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			5.3B.6	
Utilities (see 5.2E.10)	Broadcast Tower															S	S		
	Minor Utility, Elevated Water Storage Tank	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	5.3B.4	
	Solar Farms	S													S	S	S	5.3B.5	
	Telecommunication Facility	S												S	S	P*	P*	5.3B.8	
	Other Major Utility	S													S	S	S		
COMMERCIAL, OFFICE, RETAIL																			
Entertainment (see 5.2F.1)	Bar, Nightclub, Tavern														S	S	P*	P*	5.3C.2
	Golf Course or Country Club, Private	S	S	S	S	S	S	S	S	S	S	S	S	S	S				
	Gym, Spa, Indoor Tennis Court or Pool, Private									P*	P*	P	P	P	P	P	P	5.3C.6	
	Horse Stables and Related Facilities	S															P	P	
	Indoor Entertainment Facility														P*	P*	P*	P*	5.3C.6
	Electronic Gaming Centers														P*	P*	P*	P*	5.3C.17
USE		RESIDENTIAL DISTRICTS								NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	

Office (see 5.2F.2)	Outdoor Athletic or Entertainment Facility, Private														S	S				
	Sexually Oriented Business														S					5.3C.10
	Theater											S		P	P					
	Theater, Drive-In														S	S	S			
	Water Slide, Golf Driving Range, Miniature Golf, Batting Cage or Similar Use														S	S				
	Medical Office, Individual										P	P	P	P	P	P	P	P		
	Other Office										P	P	P	P	P	P	P	P		
Overnight Accommodation (see 5.2F.3)	Bed and Breakfast	S	S	S	S	S	S	S	S	S	S	S	S	S						
	Extended Stay Facility														S	S	S			5.3C.5
	Hotel/Motel													S	S	S				
Parking, Commercial (see 5.2F.4)												S	S	S	S	S	S			
Restaurants (see 5.2F.5)	Restaurant, Drive-In or Outdoor Curb Service														P	P	P			
	Restaurant, Indoor with Seating Only										P*	P		P	P	P	P			5.3C.8
	Restaurant with Seating and Drive-Through Window														P	P	P	P		
	Restaurant, Take-Out Only (Drive-Through or Walk Up)											P*	P		P	P	P	P		5.3C.9
Retail Sales and Service (see 5.2F.6)	Convenience Store without Fuel Sales										P*	P*		P	P	P	P			5.3C.4
	Convenience Store with Fuel Sales													P	P	P	P			
	Open Air Market											S			P	P	P			
USE		RESIDENTIAL DISTRICTS									NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards									S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes		
	Personal Service-Oriented Use (excludes commercial greenhouses or any use with outdoor operations)											P*	P*		P*	P*	P	P		
	Hair Salons Barbershops Beauty Shops									S	P	P	P	P	P	P	P			

	Banks or Financial Institution																	P*	P*	P	P	P	P	P	P	P	5.3C.1		
	Repair Oriented Use (no outdoor operations)																			P*	P	P*	P	P	P	P	5.3C.7		
	Sales Oriented Use (no outdoor operations)																			P	P		P	P					
	Sales Oriented Use with Outdoor Operations																							P		P			
	Veterinarian / Kennel, Indoor																			P*	P*	P*	P*	P	P	P	P	5.3C.15	
	Veterinarian / Kennel with Outdoor Operations																								P*		P*	5.3C.16	
Self-Service Storage (see 5.2F.7)																									S	P	P		
Vehicle Sales and Service (see 5.2F.8)	Car Wash																							P*	P*	P*	5.3C.3		
	Vehicle General Repair																								P*		P	5.3C.11	
	Vehicle Sales, Rental																								P*		P	5.3C.12	
	Vehicle Service, Limited																								P*	P*	P*	P	5.3C.13
	Vehicle Towing, Storage																									P*		P*	5.3C.14
INDUSTRIAL AND MANUFACTURING																													
Aviation Service (see 5.2G.1)																												S	
USE		RESIDENTIAL DISTRICTS										NONRESIDENTIAL DISTRICTS																	
P = Permitted by right		P* = Permitted subject to standards										S = Special use permit required																	
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C	B	D	OI	CR	SB	I-1	I-2	Notes									
Light Industrial Service (see 5.2G.2)	Flex Space																	P*	P*	P*	5.3D.1								
	Industrial Use, Indoor																	P*	P*	P	5.3D.2								
	Industrial Use with Outdoor Operation																	P		P									
Manufacturing and Production (see 5.2G.3)	Indoor or Outdoor																			P*	5.3D.3								
	Indoor Only																			P*	5.3D.3								
Resource Extraction (see 5.2G.4)																											S		
Warehouse and Freight Movement (see 5.2G.5)	Storage (including Outdoor)																	P*		P*	5.3D.6								
	Truck Terminal																			P									
	Recycling Collection (Outside)																			P*	5.3D.4								

Waste Related Service (see 5.2G.6)	Recyclable Materials Collection Center																	P*		P*	5.3D.5	
	Junk and or Salvage Yard																				S	
	Sanitary Landfill																				S	
	Other Waste Related Service																				S	
Wholesale Sales (see 5.2G.7)																		P*	P*	P	5.3D.7	
OTHER																						
Agriculture (see 5.2H.1)	Agriculture or Silviculture	P*	P*																		5.3.E.1	
	Greenhouse, Nursery (Commercial)																		P	P		
USE		RESIDENTIAL DISTRICTS									NONRESIDENTIAL DISTRICTS											
P = Permitted by right		P* = Permitted subject to standards									S = Special use permit required											
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes				

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: June 30, 2020		
Subject: Historic Garner Depot Contract		
Location on Agenda: Reports		
Department: Administration		
Contact: Rodney Dickerson, Town Manager		
Presenter: Rodney Dickerson, Town Manager		
<p>Brief Summary:</p> <p>Review contract between the Town of Garner and Garner Area Historical Society for operation of the historic depot as a museum.</p> <p>Amend Town Ordinance to allow for the sale and consumption of wine and beer in and around the Historic Garner Depot Museum</p>		
<p>Recommended Motion and/or Requested Action:</p> <p>Approve Contract and Alcohol Amendment to go on future Agenda</p>		
Detailed Notes:		
Funding Source: n/a		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	RD	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		



TO: Town Council

FROM: Rodney Dickerson

DATE: June 23, 2020

SUBJECT: Garner Area Historical Society request to serve Alcohol

The Garner Area Historical Society (GAHS) is requesting Town Council permission to serve and allow consumption of alcohol, namely beer and wine, at the Garner Historic Depot Museum. The consumption will be incorporated into promotional and fundraising events. GAHS believes this provision will be similar to what is currently allowed at the Garner Performing Arts Center. The permission can be achieved by amending **Section 11-17 .-Consumption of alcoholic beverages**. See the highlighted sentence below:

Sec. 11-17. - Consumption of alcoholic beverages.

(a)

It shall be unlawful for any person to consume any malt beverages or unfortified wine or to possess an open container of any malt beverage or unfortified wine, on any property owned, occupied, or controlled by the town, including, without limitation, any public park, building or grounds used for municipal purposes, or the area within the right-of-way of any street, sidewalk, alley or public parking area, provided; however, sale, distribution, possession and consumption of malt beverages and/or unfortified wine is permitted within a specified area at community events which have been approved" by town council resolution, where the applicant has specified such area and such beverages in the application and has all required ABC permits, and/or within the Garner Historic Auditorium facility, pursuant to permit issued by the parks and recreation director; **and in and around the Garner Historic Depot Museum subject to all applicable ABC permits.**

HISTORIC GARNER DEPOT CONTRACT

JUNE 30, 2020



DRAFT CONTRACT

GENERAL CONDITIONS

- Town Retain Ownership of Depot Building (including Caboose) and Property
- Garner Area Historical Society (GAHS) operate as a museum open to general public
- Includes use of a portion of Pearl St. Building for office space and storage
- Initial Term: 10 years

SOCIETY SHALL PROVIDE

- (1) Interior janitorial services
- (2) Exhibit construction and maintenance
- (3) Flower beds and plant box plantings and maintenance
- (4) Brick Pavers –engraved as a fundraiser
- (5) Maintain collection including disposition

TOWN SHALL PROVIDE

- (1) Maintenance of electrical, water and sewer utility facilities
- (2) Fire alarm and extinguisher annual inspections
- (3) Snow removal from the parking lot and pedestrian walkways
- (4) Lawn mowing and general landscaping

TOWN PROVIDE (CONT'D)

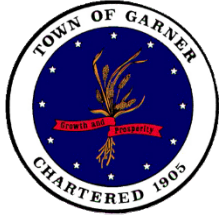
- (5) Maintenance of replacement of sidewalk and parking lot pavement
- (6) Structural building maintenance or replacements when funds are available
- (7) Disposal of trash from receptacle outside of the building
- (8) Replacement of out of reach light bulbs and receptacles as needed

GAHS ALCOHOL REQUEST

- GAHS seeking permission for consumption of beer and wine
 - Similar to GPAC and Downtown events
 - Would follow ABC Guidelines
 - Require amendment to Town Ordinance Section 11-17
 - “...in and around the Garner Historic Depot Museum subject to all applicable ABC permits.”

DISCUSSION

- Put on future agenda near completion of construction (July/August time frame)



Town of Garner

900 7th Ave. * Garner, North Carolina 27529

STATE OF NORTH CAROLINA
COUNTY OF WAKE

CONTRACT FOR MUSEUM SERVICES

Contract for Museum Services dated as of _____ by and between the Town of Garner, a North Carolina Corporation ("Town") whose address is 900 Seventh Avenue, Garner NC and the Garner Area Historical Society, a North Carolina non-profit corporation ("Society") whose address is P.O. Box 156, Garner, NC.

WHEREAS, the Town owns real property located at 110 Pearl Street, and the building located thereon known as Garner Historic Depot ("Museum"); and

WHEREAS, Society will operate a historical museum at the Museum, consisting of a collection of artifacts, exhibits, photographs, documents and other items owned (or on-loan) by Society ("Collection"); and

WHEREAS, because Society's interest in operating the Museum and its ownership of the Collection, Society is the only source for the services that it is to provide under this Contract, and it is in the best interest of the Town and its residents that Town contract with Society for such services on a sole source basis.

NOW, THEREFORE, for and in consideration of the premises, and the terms, covenants, conditions and provisions contained herein, the parties agree as follows:

ARTICLE I

Provision of Services, Term, Compensation

Section 1.1. Agreement to Provide Services. Society shall operate the Museum and provide museum services for the Town as described in Article II.

Section 1.2. Term of Contract. The term of this contract is ten years and commences _____ and expires _____, provided that either party may terminate this contract upon thirty (30) days written notice to the other party.

If the Contract is terminated or not renewed, the Society agrees to remove all items of personal property within 180 days, and understands that if all such items are not removed, the Town shall have a
Revised: June 23, 2020

possessory lien on the same, with ownership of all items except those documented to be on-loan to the Museum to become the property of the Town, and the right to remove and warehouse and/or find an appropriate entity to assume ownership of the same and/or dispose of them, all in accordance with applicable laws. In doing so, Town assumes no liability for the protection or maintenance of such personal property.

Section 1.3. Compensation. Nothing in this agreement shall imply that the Town shall compensate the Society or any of its members for the operation of the Museum. Town will pay directly or provide funds for various costs associated with the operation of the Museum as outlined in Article III below. The Town, at its discretion, may provide funds, discretionary or otherwise, for items associated with the operations of the Museum.

ARTICLE II Scope of Services

Section 2.1. Scope of Work in General. Society shall provide museum operation services at the Museum, including without limitation, collections care, management of Society's archives, exhibitions, educational programs and building stewardship.

Section 2.2. Specific Museum Management Duties. Subject only to the limitations set forth in this Contract, Society shall have and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Museum during the term of this contract, including without limitation the following:

- (a) Recruit, train and maintain all volunteers as deemed necessary by Society for operation of Museum;
- (b) Adopt and implement all policies relating to the acquisition, accession, loan, care, storage, deaccession and disposal of the Collection in accordance with the standards defined by the American Alliance of Museums;
- (c) Adopt and implement the exhibition, interpretation, display and public access of the Collection in accordance with the standards defined by the American Alliance of Museums;
- (d) Adopt and implement the historical, educational and research policies, programs and activities of the Museum;
- (e) Properly maintain all Collection inventory records, accession records, condition assessment and conservation records, and exhibition records;
- (f) Adopt and implement the budgetary and fiscal policies of the Museum, including the establishment of admission fees and other fees and charges for other program services;
- (g) Keep and maintain the financial books and records of the Museum in accordance with generally accepted accounting principles;
- (h) Adopt and implement the best practices for building stewardship of the Museum;
- (i) Adopt and implement policies relating to the ancillary activities and services offered at the Museum; and
- (j) Adopt and implement policies relating to the promotion and publicity of the Museum.

In performing its duties under this Section, Society shall exercise the same degree of care and skill exercised by nonprofit corporate owners and managers of similar local/regional history museums in the

United States and shall comply in all material respects with all laws applicable to the conduct of its business and the use and operation of the Museum.

Section 2.3. Public Museum. Society shall operate the Museum as a facility open to the general public, subject to such reasonable rules and regulations as Society may promulgate in its discretion from time to time regarding matters that include without limitation admission fees; days and hours of operation; the safety of volunteers and the general public; the safety protection and security of the Collection; the anonymity of donors who desire anonymity; and to the extent required by law, the confidentiality of volunteer records and business records.

Section 2.4. Collection. Society shall have full responsibility for the maintenance, care, documentation and use of the Collection. The accession and deaccession of Collection items as well as their management, care, documentation and use shall be governed by Society's Collection Management Policy and in accordance with standards defined by the American Alliance of Museums. The Collection will be used for exhibitions, research and public programs at the discretion of the Society in accordance with its mission in order to provide museum services to the Town.

Section 2.5. Alterations and Improvements to Museum. Society may make whatever nonstructural alterations or improvements to the Museum that it deems necessary or desirable in the best interests of the Museum. Society shall make no structural alterations or additions to the Museum or any associated Town property without the written consent of the Town. Unless otherwise provided in such written consent, any structural improvements or additions constructed by the Society shall become the Town property upon substantial completion. All such nonstructural or structural alterations, improvements and additions, regardless of how funded, shall be part of the Museum real property and shall be subject to the terms of this Agreement.

Section 2.6. Personal Property. Society may furnish, install and maintain at the Museum any and all personal property which Society deems necessary or desirable in connection with the operation of the Museum. All tangible personal property acquired by Town or Society and installed in or located at the Museum, regardless of how funded, shall be deemed to be subject to the terms of this Contract. All personal property installed in or located at the Museum shall be the property of Society. Society may alter, rehabilitate and improve such personal property in such manner, as it deems necessary or desirable in the best interests of the Museum.

Section 2.7. Use of a portion of the Pearl Street Building. Town will allow the Society to use specified rooms at 110 Pearl Street for the Museum, storage of artifacts and office space. The Society will also have access to the facility for restrooms and parking for the Museum.

Section 2.8. No liens. In performing any work required or permitted under this contract, Society shall keep Museum free of all liens, and hold the Town harmless from liability for any such liens, including costs and attorney fees.

Section 2.9 Disposition of objects. The Society shall have a policy for the disposal of objects; defined as the physical removing of an object from the museum. Disposal can include returning to owner, transfer to another institution (museum, government agency, etc.), exchange with another institution, sell by auction or tender, or destruction for objects in very poor condition.

Revised: June 23, 2020

This provision shall be binding on the successors and assigns of the parties hereto with reference to the subject matter of this Contract.

ARTICLE III

Payment of Expenses

Section 3.1. In General. Except as this Article provides otherwise, Society shall bear all costs and pay all expenses incurred in providing services required under this contract.

Section 3.2. Utilities. Town shall pay the costs of the following utility services provided to the Museum: heat, air conditioning, electricity, water and sewer, security and fire alarm monitoring fees. Society shall pay the costs of telecommunications/internet services and, except as provided in the preceding sentence, any and all other utilities provided to Society at the Museum.

Section 3.3. Repairs and Maintenance.

- (a) Society shall provide at its expense the following at the Museum:
 - (1) Interior janitorial services
 - (2) Exhibit construction and maintenance
 - (3) Flower beds and plant box plantings and maintenance
 - (4) Maintenance of brick patio/walkway; in particular, inscribed pavers
 - (5) Maintenance of museum display objects internal and external

- (b) Town shall provide at its expense the following at the Museum:
 - (1) Maintenance of electrical, water and sewer utility facilities
 - (2) Fire alarm and suppression system annual inspections
 - (3) Snow removal from the parking lot and pedestrian walkways
 - (4) Lawn mowing and general landscaping
 - (5) Maintenance of replacement of sidewalk and parking lot pavement
 - (6) Structural building maintenance or replacements when funds are available
 - (7) Disposal of trash from receptacle outside of the building
 - (8) Replacement of out of reach light bulbs and receptacles as needed
 - (9) Pest control as needed

ARTICLE IV

Indemnification and Insurance

Section 4.1. Indemnification. To the maximum extent allowed by law, the Society shall indemnify and save harmless the Town and its officers, officials, agents and employees from and against all claims, judgments, costs, expenses, including reasonable attorney's fees, which arises in any manner from or as a result of performance of this contract by, or the acts or omissions of, the Society or the Society's officers, officials, agents or volunteers.

Section 4.2. Insurance.

Revised: June 23, 2020

(a) Society shall maintain general liability insurance applicable to performance of this contract and shall name the Town as an additional insured on the policy with respect to claims arising out of this contract. A certificate evidencing this insurance shall be submitted to the Town prior to moving into the Town buildings. Insurance shall be in minimum limits of \$1,000,000 (combined single limit for bodily injury and personal property damage liability) and shall be maintained in force for the term of this contract.

ARTICLE V

Miscellaneous

Section 5.1. Independent Contractor. Notwithstanding anything to the contrary contained herein, this contract shall not be deemed or construed to make the parties hereto partners or joint ventures, to render either party liable for any of the debts or obligations of the other, or to make either party the agent of the other or to bind or obligate the other in any manner to any third party. Without limiting the generality of the foregoing, the employees of the Society are not Town employees and are not entitled to any of the benefits Town provides for its employees, including without limitation, health, life or disability insurance, sick for annual leave, or workers' compensation.

Section 5.2. Authority of Signers. Each individual executing this contract hereby represents and warrants that he or she has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he or she is executing this contract to the terms hereof.

Section 5.3. Entire Agreement; Amendment. This contract constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein. This Agreement may be amended only by a written instrument executed by both parties hereto.

Section 5.4. No Waiver. No waiver of any condition or provisions of this contract by any party shall be valid unless in writing signed by such party. No such waiver shall be deemed or construed as a waiver of any other or similar provision or of any future event, act or default.

Section 5.5. Severability. If any provision of this contract is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this contract and replaced by a valid provision as close in meaning and intent as the excised provision as circumstances require, and this contract shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

Section 5.6. Assignment or Delegation. Society may not assign its rights or delegate its duties under this contract, or any party of it, except with the prior written consent of Town.

Section 5.7. Governing Law. This contract shall be governed by the laws of the State of North Carolina and any suit or legal action hereunder shall be brought only in the courts of said State.

Section 5.8. Notice. Any notice by this contract must be hand delivered or sent by first class mail to the appropriate party at the address set forth above the signatures below, or any other address which the party subsequently designated in writing.

Revised: June 23, 2020

Section 5.9. Non-discrimination Assurances. It is specifically agreed as part of the consideration of the signing of this Contract that the parties hereto, their agents, officials, employees or servants will not discriminate in any manner on the basis of age, handicap, sex, race, color, creed, sexual orientation or national origin with reference to the subject of this Contract, no matter how remote.

Garner Area Historical Society

Town of Garner

Name: _____
Name of Agent (type or print)

Town Manager

By: _____
(Signature)

Title: _____

Attest:

(Secretary, if a corporation)

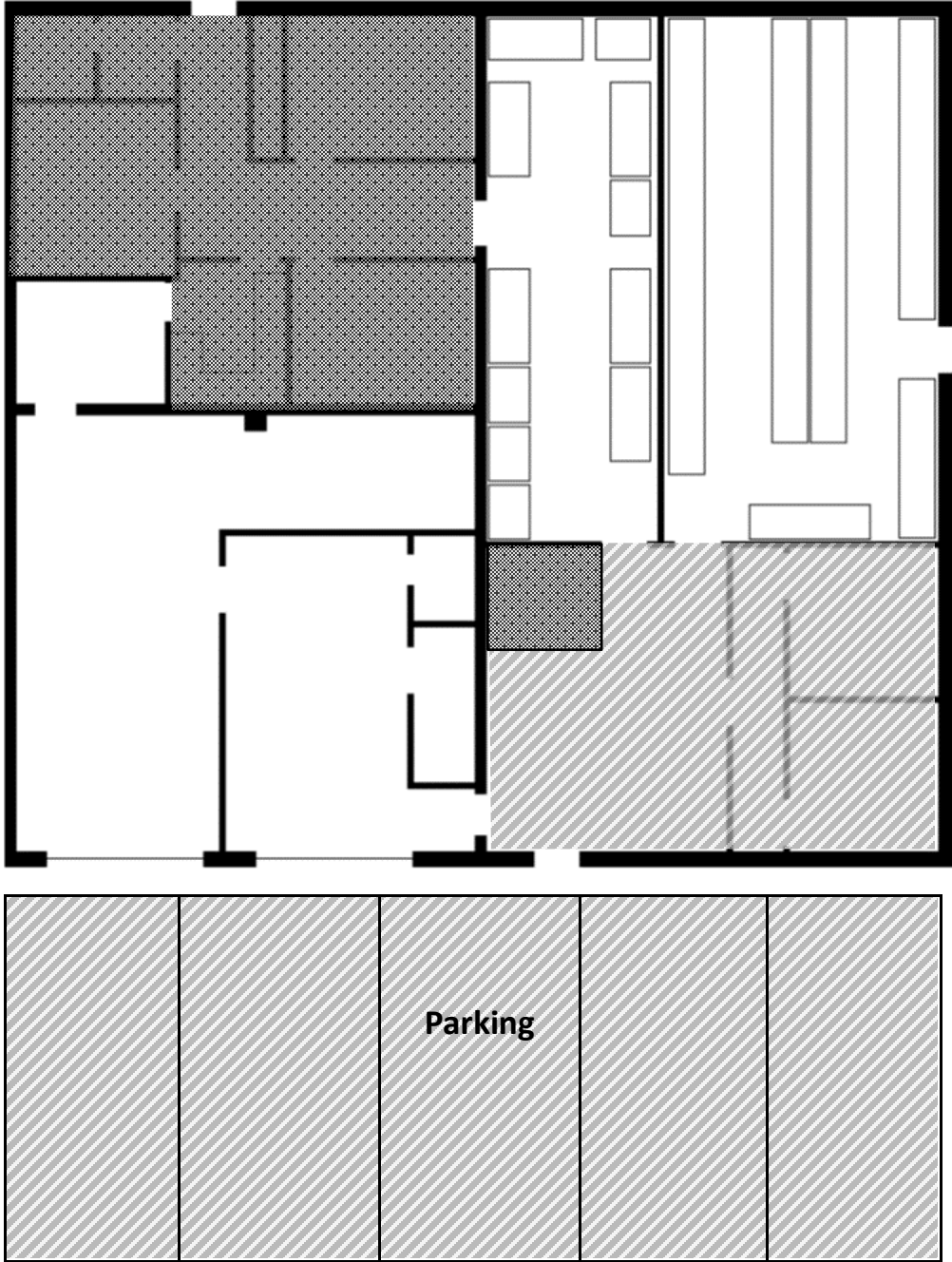
Attest:

Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

Exhibit A
Pearl Street Building



Area designated for use by Garner Area Historical Society (GAHS)



Common Area use by GAHS and others. Entryway and aisles must remain clear for others to access.



Town of Garner use only

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: June 30, 2020		
Subject: Animal Control Ordinance		
Location on Agenda: Reports		
Department: Police		
Contact: Joe Binns, Interim Chief of Police		
Presenter: Joe Binns, Interim Chief of Police		
Brief Summary: Recommended changes to Chapter 3 - Animals and Fowl of the Code of the Town of Garner. We recommend changes to sections dealing with nuisance animals (Remove Sec. 3-15, Add Sec. 3-16) and dangerous animals (Sec. 3-17) as well as penalties for those violations.		
Recommended Motion and/or Requested Action: Consider approving changes to the ordinance		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JMB	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Chapter 3 - ANIMALS AND FOWL¹¹

Footnotes:

--- (1) ---

Editor's note— Ord. No. 3630, § 1, adopted Aug. 1, 2011, repealed the former ch. 3, §§ 3-1—3-43, and enacted a new ch. 3 as set out herein. The former ch. 3 pertained to similar subject matter and derived from Ord. No. 3598, § 1, adopted Sept. 21, 2010; Ord. No. 3199, § 1, adopted July 1, 2002; Ord. No. 3198, § 1, adopted July 1, 2002; Ord. No. 3192, §§ 1—9, adopted June 8, 2002; Ord. No. 3069, §§ 1—5, adopted Jan. 7, 2002; Ord. No. 3066, § 1, adopted Dec. 18, 2001; and Ord. No. 2989, § 1, adopted Sept. 7, 2000.

ARTICLE I. - IN GENERAL

Sec. 3-1. - Definitions.

Animal control officer means an employee or agent of the Town of Garner Animal Control Program authorized to enforce this chapter. By default, all sworn Garner Police Officers are empowered as animal control officers for the purposes of this chapter.

Animal shelter means any premises designated by the town for the purpose of impounding and caring for animals found running at large or otherwise subject to impounding in accordance with the provisions of this chapter.

At large means when any animal is off the property of its owner and not under the restraint of a competent person. This definition does not apply to any areas in city parks that have been delineated by the City Council as dog exercise and play areas.

Attack means when an animal approaches and bites or otherwise makes physical contact with a person in a vicious, terrorizing or threatening manner without the animal having been teased, molested, provoked, beaten, tortured or otherwise harmed.

Attack training facility means any facility where a person, group of persons, partnership or corporation engages in boarding, breeding, selling and/or training dogs or other- animals for the purpose of having them attack.

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

Dangerous animal means any animal that has demonstrated a propensity or tendency to behave in a manner which may endanger persons or property and/or any non-domesticated animal indigenous to the State of North Carolina, including hybrid animals that are part-wild. This definition includes but is not limited to any dog which:

- (1) Bites, attacks or otherwise inflicts serious injury on a person without provocation on public or private property;
- (2) Kills or injures a pet or domestic animal without provocation;
- (3) Is owned, trained or harbored primarily or in part for the purpose of dog fighting; and/or
- (4) Approaches a person not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Dealer means any person who is licensed by the U.S. Department of Agriculture as an animal dealer.

Domestic animal means any animal, including but not limited to dogs, cats, horses, sheep, cattle, goats, hogs, poultry, etc., domesticated by man so as to live and breed in a tame condition.

Exhibitor means any person who is licensed by the U.S. Department of Agriculture as an animal exhibitor.

Exposed to rabies means when an animal has been bitten by or been exposed to any other animal known or suspected to have been infected with rabies.

Inherently dangerous mammal means any live member of the canidae, felidae or ursidae families, including hybrids thereof, which due to their inherent nature, may be considered dangerous to humans and include:

- (1) *Canidae*, including any member of the dog (canid) family not customarily domesticated by man, or any hybrids thereof, including wolf hybrids which are a cross between a wolf and a domesticated dog, but not including domesticated dogs (*canis familiaris*);
- (2) *Felidae*, including any member of the cat family weighing over fifteen (15) pounds not customarily domesticated by man, or any hybrids thereof, but not including domestic cats (*felis catus*); and
- (3) *Ursidae*, including any member of the bear family, or any hybrids thereof.

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

Neutered means any male animal which has been operated upon to prevent reproduction.

Noxious odor, for purposes of this section, means any odor resulting from the keeping of an animal (or animals) that can be identified on an adjacent property and interferes with the ordinary use and enjoyment of private or public property.

Owner, when used in the context of an animal, means any person, group or association of persons, firm, partnership or corporation owning, keeping, having charge of, taking care of, sheltering or frequently feeding an animal, or knowingly allows an animal owned by others to visit the owner's property. An owner is responsible for the care, actions and behaviors of his animal(s). In the event that the owner of an animal is a minor, the parent or guardian of such minor shall be held liable for non-compliance with the provisions of this chapter.

Owner, when used in the context of real property, means any person, group or association of persons, firm, partnership or corporation owning, renting or leasing real property, such that the secured enclosure requirement and other requirements of this chapter apply equally to a tenant or lessor as to an owner of real property.

Pet means a domesticated animal kept for pleasure rather than utility.

Restraint means an animal is under restraint within the meaning of this chapter if it is (1) controlled by means of a chain, leash or other like device; (2) secured within a vehicle; (3) within a secure enclosure; or (4) within the dwelling house of the owner.

Secure enclosure means inside a residence (home or apartment) if the animal is kept as an inside pet. For an outdoor pet, a secure enclosure means an enclosure with a minimum size of fifteen (15) feet by eight (8) feet by eight (8) feet with a floor consisting of a concrete pad at least four (4) inches thick. The walls and roof of the structure must be constructed of welded chain link fencing with a minimum thickness of twelve (12) gauge supported by galvanized steel poles at least two and one-half (2½) inches in diameter. The vertical support poles must be sunk in concrete filled holes at least eighteen (18) inches deep and at least eight (8) inches in diameter. The chain link fencing must be anchored to a concrete pad with galvanized steel anchors placed at intervals no more than twelve (12) inches along the perimeter of the concrete pad.

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

Spayed means any female animal which has been operated upon to prevent conception.

Stray means any dog or cat that appears homeless or unwanted, and any dog that is not displaying a valid rabies tag unless exempted under subsection 3-28(a) of this chapter.

Untimely means occurring between the hours of 11:00 p.m. and 7:00 a.m.

Wild or exotic animal shall be defined as one which would ordinarily be confined to a zoo, one which would ordinarily be found in the wilderness of this or any other country, one which is a species of animal not indigenous to North America or one which otherwise causes a reasonable person to be fearful of significant destruction of property or of bodily harm. The latter includes, but is not limited to, such animals as monkeys, raccoons, squirrels, ocelots, bobcats, wolves, hybrid wolves and other such animals or any animal which causes zoonotic diseases.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 1, 6-2-14; Ord. No. 3833, § 1, 11-22-16)

Sec. 3-2. - Establishment and composition of the animal control program.

- (a) There is hereby created the Animal Control Program of the Town of Garner, hereinafter referred to as the animal control program, which shall be composed of such employees and or officials as shall be determined by the town council.
- (b) Employees or agents enforcing this chapter shall be designated as animal control officers. In the performance of their duties, animal control officers shall have all the powers, authority and immunity granted under this chapter and by the general laws of this state to enforce the provisions of this chapter and the General Statutes of North Carolina as they relate to the care, treatment, control or impounding of animals.
- (c) Except as may be otherwise provided by statutes, local laws or ordinances, no officer, agent or employee of the town charged with the duty of enforcing the provisions of this chapter or other applicable laws shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties unless he acts with actual malice.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-3. - General duties of the animal control program.

- (a) The animal control program shall be charged with the responsibility of:
 - (1) Enforcing all state and local laws, ordinances and resolutions relating to the care, custody and control of animals within the corporate limits of Garner;
 - (2) Assisting in the enforcement of the laws of the state with regard to animals and especially with regard to vaccination of animals against rabies and the confinement or controlling of dangerous animals and dangerous dogs;
 - (3) Investigating cruelty or abuse with regards to animals; and
 - (4) Conducting canvasses of the town, including the homes in the town, as necessary for the purpose of ascertaining that all animals are licensed and vaccinated against rabies as required by local ordinance or state statute.
- (b) It shall be the duty of the animal control program to keep, or cause to be kept, accurate and detailed records of:
 - (1) Impoundment and disposition of all animals coming into the town's custody;
 - (2) Complaints and investigations of bite cases; and
 - (3) All other records deemed necessary.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-4. - Dead animals.

It shall be unlawful for the owner of any dead animal, or the occupant of any land on which a dead animal is found, to fail to remove such dead animal, at the expense of said owner or occupant, to a place designated by the director of public works.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-5. - Horses, cattle, swine, chickens and other animals or fowl.

- (a) Livestock and domestic fowl of all descriptions except backyard hens (chickens only) are hereby prohibited in any area of the town except those areas zoned for agricultural purposes by the zoning ordinance. Furthermore, it shall be unlawful, regardless of zoning, for any person to maintain, keep, house or stable any horse, mule, pony, cow, sheep, goat, domestic fowl (excluding backyard hens) or livestock in the town within three hundred (300) feet of any dwelling, school, church, business, commercial or professional establishment. Not more than a total of three (3) horses, mules, ponies, cows, sheep, goats or other such animals shall be maintained on one (1) lot and such lot must contain no less than one (1) acre for each such animal maintained. No more than a total of four (4) domestic fowl (excluding backyard hens) shall be maintained on one (1) lot and such lot must contain no less than one (1) acre for each four (4) or fewer domestic fowl (excluding back hens) maintained.
- (b) It shall be unlawful for any person to maintain, keep, house, possess or have under their control within the town any swine, any venomous reptile or any other wild or exotic animal.
- (c) All animals or livestock referred to in subsection (a) shall be kept and maintained in an enclosed area. Stables shall be constructed and maintained in conformity with the requirements of the Wake County Board of Health. After the stable plans and area have been approved as to sanitation requirements by the health department, application shall then be made to the building inspector for a permit for such construction. In all cases, the structure shall be located so as to give the least possible offense to the occupants or residents on adjoining lots. All such stables shall be cleaned and disinfected at least once each week and kept free of noxious odors.
- (d) This section is not intended to and shall not apply to the passing of animals or livestock of an agricultural nature such as referred to in subsection (a) through the town or to their temporary use within the prohibited distances of occupied dwellings and buildings for plowing, hauling and similar purposes and other uses of a temporary nature such as exhibition, provided that such animals and livestock are not kept, stabled or maintained within the restricted areas. This section is not intended to and shall not apply to animals of a species customarily used in North Carolina as ordinary household pets, non-flesh-eating fish confined to an aquarium, birds or insects. It is not intended to and shall not apply to lawfully operated and located pet shops, animal-control shelters, scientific research laboratories, circuses and veterinary offices, provided such animals are maintained in quarters so constructed and maintained as to prevent escape.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, §§ 2, 3, 6-2-14)

Sec. 3-6. - Backyard hens.

- (a) *[In general.]* It is unlawful to keep backyard hens (i) without an approved permit, (ii) in violation of the terms of this section and a duly issued permit, or (iii) after a permit has been revoked.
- (b) *Backyard hen permit.* A backyard hen permit may be issued, regardless of zoning, on lots that contain single-family, duplex, triplex, quadraplex or townhome dwelling units, excluding apartment complexes and condominiums.
- (c) *Number permitted.* No more than eight (8) hens are allowed per lot regardless of size and number of dwelling units except in those areas zoned for agricultural uses. It shall be unlawful to keep or maintain any rooster.

- (d) *Uses.* All aspects of the keeping of hens, including keeping chicks, eggs, manure, compost and other related attributes and activities, must be only personal and non-commercial.
- (e) *Coop and run standards.*
 - (1) A coop is a roofed-housing structure where hens are kept. The coop has an indoor area where chickens sleep, perch, nest and lay eggs. The coop also provides shelter from weather and predators.
 - (2) A run is an enclosed pen located outside of the coop structure.
 - (3) An enclosed run is completely bounded on all sides, including overhead, by a fence, cage, or wire.
 - (4) An open run is bounded on all sides by a fence, cage, or wire but is open overhead.
 - (5) A coop, or combination coop and run of sufficient size should be provided for the hens to include a minimum coop area of four (4) square feet per chicken if a run is provided. A minimum of ten (10) square feet coop area is required if no run is provided or chickens are to be contained in the coop.
 - (6) Chickens shall be secured in the chicken coop during non-daylight hours. During daylight hours, chickens may be located in the run if provided. The coop and run shall be properly designed and constructed to provide adequate security from rodents, wild birds, and predators and provide sufficient ventilation.
 - (7) The maximum area for all coop and run structures is three hundred (300) square feet.
 - (8) The maximum height for a coop or run is seven (7) feet measured from the ground to the top of the structure.
 - (9) The minimum height for an open run is four (4) feet.
- (f) *Location.*
 - (1) All hens, coop structures, and runs must be located in the rear yard.
 - (2) Coop structures and runs must be located at least ten (10) feet from any rear or interior side lot line. For corner lots the corner-side yard setback shall be the same as the principal building.
- (g) *Maintenance.* All areas within the coop and run shall be kept in a neat and sanitary condition, including removal of droppings, uneaten feed, feathers and other waste, in order to preclude odors and other nuisance violations.
- (h) *Slaughter.*
 - (1) On-premises slaughter shall be prohibited as provided for under section 3-11 of the Town Code.
 - (2) Dead hens shall be removed according to the provisions of section 3-4 of the Town Code.
- (i) *Enforcement.*
 - (1) The planning department shall be responsible for administering and issuing backyard hen permits.
 - (2) The animal control officer shall be responsible for enforcing the provisions of Town Code regarding backyard hens.
 - (3) A backyard hen permit may be revoked by the planning director or designee when an individual fails to maintain the property in accordance with the approved permit and associated requirements or applicable requirements of the Town Code. Before a permit may be revoked, the planning department shall give the permit recipient ten (10) days' notice of the intent to revoke the permit and their right to obtain an informal hearing on the allegations. If the permit is revoked, the planning director or designee shall provide a written statement to the permit recipient of the decision and the reasons for it. Failure to remove the hens from the premises within ten (10) days

after permit revocation shall result in the matter being forwarded to the town attorney for immediate action.

(Ord. No. 3738, § 4, 6-2-14)

Sec. 3-7. - Reserved.

Editor's note— Section 1 of Ord. No. 3779, adopted July 7, 2015, repealed former § 3-7, which pertained to selling baby rabbits, and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011; and Ord. No. 3738, § 5, adopted June 2, 2014.

Sec. 3-8. - Reserved.

Editor's note— Section 1 of Ord. No. 3779, adopted July 7, 2015, repealed former § 3-8, which pertained to selling baby rabbits, baby chickens, ducklings, and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011; and Ord. No. 3738, § 6, adopted June 2, 2014.

Sec. 3-9. - Bird sanctuary.

- (a) The area embraced within the corporate limits of the town and all lands owned or leased by the town outside the corporate limits are hereby designated as a bird sanctuary.
- (b) It shall be unlawful to trap, hunt, shoot or otherwise kill, within the sanctuary established by paragraph (a), any native wild bird; provided, it shall be lawful to trap starlings or similar birds or fowl, or for an authorized Garner Police Officer to shoot the same, when such birds or fowl are found to be congregating in such numbers in a particular locality that they constitute a nuisance or a menace to health or property.
- (c) It shall be unlawful for any person, within the bird sanctuary, to shoot a bow or other similar contrivance, or to fire any pistol, gun or other firearm, except on archery ranges, firing ranges or in legally established shooting galleries or ranges, or in the discharge of duty by law enforcement officers, provided the use of firearms in the destruction of rodents or similar animals or reptiles that are considered a menace to public health or property may be permitted by special permission of the chief of police.
- (d) The bird clubs of the city are hereby granted permission to erect artistic signs at such places and of such design as may be approved by the town manager. Such signs shall give notice of the regulations prescribed by this section.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 7, 6-2-14)

Editor's note— See editor's note to § 3-7.

Sec. 3-10. - Unlawful to allow fowl to run at large.

It shall be unlawful for any person owning and keeping chickens and other domestic fowl to allow the fowl to be at large in the town.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 8, 6-2-14)

Editor's note— Ord. No. 3738, § 9, adopted June 2, 2014, repealed former § 3-10, which pertained to roosters, and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011. See editor's note to § 3-7.

Sec. 3-11. - Cruelty to animals.

- (a) It shall be unlawful for any person to molest, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill, wound, injure, poison, abandon or subject to conditions detrimental to its health or general welfare any animal, or to cause or procure such action. The words "torture" and "torment" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit lawful shooting of birds, deer and other game for human food; nor to prohibit a veterinarian, the State of North Carolina Health Director or Animal Control Program agents from destroying dangerous, unwanted or injured animals in a humane manner nor to prohibit the lawful use of animals in scientific research.
- (b) Animals which are housed or maintained outside shall not be restrained by means of a device which is not at least fifteen (15) feet in length and of a size commensurate with the size of the animal, provided, however, that that no such restraint (also known as "tethering") is lawful on and after May 1, 2011, except as permitted in subsection (e) below.
- (c) Any animal housed outside must be provided shelter. This must have a solid roof, floor and three (3) sides so as to adequately protect against the elements. Any animal so housed must have access to clean water and food.
- (d) Dogs housed outdoors must be in fenced yards or pens. The pen shall be at least ten (10) feet by ten (10) feet for each dog under forty (40) pounds. Dogs weighing forty (40) pounds or greater must have a minimum pen size of at least ten (10) feet by twenty (20) feet for each dog. Each dog must have a dog house. If no natural shade is available in the pen, a cover for the pen must be provided.
- (e) It shall be unlawful to tether, fasten, chain, tie or restrain an unattended dog to any tree, fence, post, dog house or any other object, provided, however, that this ordinance shall not apply to dogs presently maintained in a fashion consistent with all existing town ordinances as of the effective date of this ordinance so long as their owner(s) register the dog within sixty (60) days of the effective date of this ordinance, with the registration form to contain a description of the dog (including name, breed, and age) and a current photograph of the dog.
- (f) "Attended tethering" shall be permitted if the owner or other responsible person is present on the premises with the dog. Tethering of attended dogs shall be on a device of at least ten (10) feet long with a harness, collar or other device commensurate with the size of the dog and shall not exceed three (3) hours in continuous duration in a 24-hour period.
- (g) An owner must remove the dog from a tether within thirty (30) days of being notified by the animal control officer and have the dog housed indoors or in an appropriate outdoor enclosure. The animal control officer shall have the authority to take custody of any dog which remains tethered after the thirty-day notification period. Any owner reclaiming a dog seized for violation of the tethering ordinance shall be required to show proof of suitable outdoor housing.
- (h) Any animal not reclaimed from the animal shelter within five (5) business days shall become the property of the town. The owner shall be responsible for any fees that accrue as a result of any animal being in the animal shelter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-12. - Licensing—Dogs and cats.

- (a) For every dog or cat six (6) months of age or older, a license shall be required and a one-time license fee in the amount of twenty-five dollars (\$25.00) shall be immediately due and payable to the town.
 - (1) Proof of a current rabies inoculation shall be required as a condition to obtaining a license under this section.
 - (2) The license fee for spayed or neutered dogs or cats shall be ten dollars (\$10.00), if satisfactory written documentation of such spaying or neutering from a licensed veterinarian is provided to the town at the time the fee is paid.
- (b) Upon learning of an unlicensed dog or cat in the town, the animal control officer shall issue a written warning to the animal's owner giving them thirty (30) days to comply with the licensing requirements herein. If a license has not been obtained after thirty (30) days, the owner will be issued a civil citation for the violation.
- (c) Reserved.
- (d) It shall be unlawful for any dog owner to fail to provide their dog with a collar or harness to which a current dog tag is securely attached. As further proof of registration, the collar or harness, with attached registration tag, must be worn at all times, except during the time the dog is hunting, or is performing at shows, obedience trials, tracking tests, field trials, schools, or other events sanctioned and supervised by a recognized organization.
- (e) It shall be unlawful for any person to use an animal registration tag for any animal other than the animal the tag is issued to.
- (f) Reserved.
- (g) Exemptions:
 - (1) The licensing requirements herein shall not apply to any animal kept in a commercially licensed kennel or other holding facility, used as a human assistance dog, used as a governmental police dog, or belonging to a nonresident of the town and kept within the boundaries of the town for not longer than thirty (30) days; provided, that all animals of nonresidents shall at the time of entry into the town be properly vaccinated against rabies, and while being kept within the town, shall meet all other requirements of this chapter.
 - (2) Owners of cats are hereby exempted from the provisions of this section related to the wearing of collars and display of tags.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-13. - Number to be kept on premises; sanitary quarters required.

- (a) It shall be unlawful for any person(s) to keep or maintain more than two (2) dogs on any lot or parcel of land having less than twenty thousand (20,000) square feet, and an additional seven thousand (7,000) square feet shall be required for each additional dog.
- (b) It shall be unlawful for the owner or custodian of any animal to maintain such animal in quarters that are not sanitary.
- (c) Exemptions: The requirements in subsection 3-13(a) shall not apply to:
 - (1) Dogs kept in an approved animal shelter, a veterinarian's facility, a commercially licensed kennel or any other commercially licensed holding facility.
 - (2) Participants certified by a well recognized professionally operated rescue organization provided animals are adopted out within one (1) year of receipt and provided the participant is registered with the Town of Garner.
 - (3) Dogs which are less than five (5) months of age.

- (4) Any dog for which the owner can provide a certificate issued by (1) the American Kennel Club (AKC) "Canine Good Citizen" training program that demonstrates that the dog is properly trained or (2) another bona fide, comprehensive training program that meets the same standards outlined in the AKC program, so long as any owner with more than the number of dogs allowed in subsection 3-13(a) has such a certificate for all of the dogs they own. The dogs requiring such training must be enrolled in an approved training program within thirty (30) days of the time that the number of dogs exceeds the allowable number of dogs according to this chapter. The training program must be completed successfully within twelve (12) months of the time that the number of dogs exceeds the allowable number of dogs according to this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-14. (Repealed)

Sec. 3-15. Prohibited actions.

- (a) It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner or to permit an animal to run at large.
- (b) It shall be unlawful for any person to possess or maintain an animal that engages in the following conduct:
 - (1) Animals that habitually or repeatedly disturb, interfere with or annoy human beings or other animals while not in the mode of attack;
 - (2) Animals that tip over garbage containers, or damage gardens, flowers, or vegetables; or
 - (3) In the case of a female animal, one that is not confined in a secure enclosure during estrus.
 - (4) Allowing any dog to leave its feces on public streets, sidewalks, town parks, other town property or the property of another without the permission of the owner of the property.
 - (5) Maintaining an animal that barks, whines, howls or yowls in an excessive, continuous or untimely fashion, or makes other noise in such a manner that results in an annoyance or interference with the reasonable use and enjoyment of neighboring premises.
- (c) When the animal control officer's investigation determines that three reports of actions prohibited by this section have occurred within any 90 day period, a "Nuisance Animal Notice" will be issued which requires the owner or person in possession of the animal to keep the animal on his or her own property at all times unless the animal is under restraint or to take specific actions to limit excessive barks, whines, howls, yowls or other disturbing behavior. Penalties for subsequent violations will begin after the Nuisance Animal Notice has been issued (fourth offense within any 90 day period).

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 10, 6-2-14)

Sec. 3-16. - Confinement and control of inherently dangerous mammals.

- (a) It shall be unlawful for any owner to keep an inherently dangerous mammal within the town.
- (b) Exemptions: The following shall be exempt from this section:
 - (1) Any nonprofit institution or exhibitor or dealer which owns or harbors inherently dangerous mammals for research, provided that such institution/facility/premises are licensed by the U.S. Department of Agriculture or Interior.
 - (2) Traveling fairs, circuses and carnivals.

- (c) Recapturing. The owner of any inherently dangerous mammal shall reimburse the town for all costs incurred while attempting to recapture any escaped inherently dangerous mammal. If the animal is sheltered or euthanized by animal control, the owner shall also pay these costs.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-17. - Confinement and control of dangerous animals.

- (a) It shall be unlawful for any owner of a dangerous animal to permit it to be at large.
- (b) The Animal Control Officer may declare any animal as dangerous who (1) bites, attacks or otherwise inflicts serious injury on a person without provocation on public or private property, (2) kills or injures a pet or domestic animal without provocation, (3) is owned, trained or harbored primarily or in part for the purpose of dog fighting and/or (4) approaches a person not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack. It is unlawful for any owner to maintain or harbor unconfined or unrestrained any animal which has been deemed a dangerous animal by the Animal Control Officer.
- (b) The owner of an animal that has been deemed dangerous which has generally been maintained outdoors shall have 60 days from the date of notification to provide a humane, outdoor secure enclosure. The owner shall post a plainly visible sign upon the secure enclosure warning that a dangerous animal is on the premises. The sign shall be one (1) foot by two (2) feet or (2) square feet in area. The lettering on the sign shall be proportionate with the sign and must be approved by the animal control officer.
- (c) The owner of a dangerous animal which is generally maintained indoors, including in a location such as an apartment where it is not feasible to construct an enclosure, shall confine the animal inside the owner's residence. The owner's residence shall satisfy the secure enclosure requirement.
- (d) The animal deemed to be dangerous shall be kept at the animal shelter at the owner's expense until the appropriate enclosure is available and the owner applies for and receives the permit.
- (e) When a dangerous animal is confiscated under this provision, the owner of any dangerous animal shall be given written notice at the time of confiscation that if the owner fails to obtain a permit to upon the expiration of sixty (60) days from the confiscation the animal will become property of the town and will be turned over to the animal shelter for disposition.
- (f) If the owner of a dangerous animal obtains a permit to return the animal to the owner's premises, and including where required, constructs a secure enclosure which is approved by the animal control officer within sixty (60) days, the animal can be released from confiscation so long as all civil penalties due, fees owing to the Town of Garner Animal Control Program and the animal shelter for harboring, caring for and maintaining the animal are paid.
- (g) If the owner of a dangerous animal obtains a permit to return the animal to the owner's premises, and including where required, constructs the secure enclosure, and the animal is again confiscated, the animal will become the property of the town and will be turned over to the animal shelter for disposition.

- (h) The owner of a dangerous animal shall keep the animal leashed, muzzled and under the control of an adult owner or other responsible adult at all times when the animal is not inside the owner's residence or in the secure enclosure described above.
- (j) The owner of a dangerous animal shall permanently identify the animal as a dangerous animal by a microchip implanted under the animal's skin within sixty (60) days from the date of notification to do so, at the owner's expense.
- (k) The owner of a dangerous animal will be notified in writing regarding whether the "generally maintained indoors" or "generally maintained outdoors" subsections apply to that animal.
- (l) The owner of a dangerous animal shall allow the animal control officer access to inspect the owner's premises as necessary to ensure compliance with state law and local ordinance.
- (m) Once the owner of a dangerous animal has met all criteria for harboring a dangerous animal, and the permit is approved by the animal control officer, the animal may be released to the owner from the animal shelter.
- (n) To obtain the permit described above, the owner shall be required to establish the following: that all civil penalties due have been paid, that all fees due to the Animal Control Program and the animal shelter have been paid, that a permit fee of \$500.00 has been paid, that the owner agrees that the animal shall be kept indoors or maintained on a leash, muzzled, and under the control of an adult owner or other responsible adult at all times, or in the secure enclosure where required, that the owner has obtained owners or renters insurance with liability coverage for dog attacks, and has provided the Town with a certificate of insurance; the permit shall become effective only upon approval by the animal control officer.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3833, § 2, 11-22-16)

Sec. 3-18. - Requirements for an attack training facility.

It shall be unlawful for any person, group of persons, partnership or corporation to conduct training for dogs or other animals intended to prepare the animals to attack at any location unless such training is conducted within a secure enclosure.

Such training within a secure enclosure is within the meaning of this ordinance if it is performed within (1) a fence or structure of adequate height to prevent the dog or animal from jumping, climbing or otherwise escaping from the enclosure and (2) said training is conducted in the presence of the owner(s) or trainer(s) at all times.

Any dog or animal trained or being trained to attack is deemed to be dangerous and is subject to all the provisions of this ordinance relative to dangerous animals.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-19. - Reserved.

Sec. 3-20. - Required notification to the animal control program by owners of dangerous animals or dangerous dogs.

The owner of an animal declared dangerous under this article shall inform the animal control officer or a Garner Police Officer, as soon as practicable, but not later than twenty-four (24) hours, after the occurrence of any of the following:

- (1) An attack or biting upon any human being committed by the dangerous animal in the owner's care or control.
- (2) An attack or biting upon any domesticated animal or pet while the dangerous animal is off the owner's property.
- (3) The destruction of or damage to property of another by the dangerous animal.
- (4) The roaming or escape of any dangerous animal required to be restrained or confined to a secure enclosure.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-21. - Dogs or animals used for sentry or guard duty.

Any person owning, maintaining or harboring a dog or other animal for sentry or guard purposes must register said dog or animal with the animal control program.

The owner shall post a plainly visible sign warning that there is a guard or sentry dog or animal on the premises. Said sign shall not exceed one (1) foot by two (2) feet or two (2) square feet in area.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-22. - Teasing and molesting.

It shall be unlawful for any person to tease, bait, or in any way molest any animal.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-23. - Law enforcement dogs excluded.

Any dog used by a law enforcement agency in the investigation of crimes or as otherwise necessary in the enforcement of the law is excluded from requirements of this chapter with the exception that they are regulated by the provisions of articles II and III of this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-24. - Interference with enforcement of chapter.

It shall be unlawful for any person to interfere with, hinder or molest the animal control program agents or officers or veterinarians in the performance of any duty authorized by this chapter, or seek to release any animal in the custody of such, agents, except as otherwise specifically provided.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-25. - Imposition of penalties for violations of chapter.

- (a) Except as otherwise provided, any person who violates any provision of this chapter shall be assessed a civil penalty of one hundred dollars (\$100.00). If the violation continues, each day's violation shall constitute a separate offense. Any penalty not paid within thirty (30) days from the date of issuance will double. Civil penalties may be assessed by citation and recovered by the town in a civil action in the nature of a debt.

- (b) Any person who violates subsection 3-5(c) regarding a noxious odor shall be provided written notice of the violation and an explanation of how to come into compliance with the ordinance violated. If the violation is not corrected within fifteen (15) days, the owner shall be assessed a civil penalty of one hundred dollars (\$100.00). Each day after the initial fifteen (15) day period counts as a new violation.
- (c) Any person who violates sections 3-5 or 3-13 regarding the number of animals allowed shall be provided written notice of the violation and an explanation of how to come into compliance with the ordinance violated. If the violation is not corrected within fifteen (15) days, the owner shall be assessed a civil penalty of one hundred dollars (\$100.00) for each animal over the limit.
- (d) Violations of subsection 3-12(a) (Licensing—Dogs and cats):
 - (1) Any violation of this subsection shall incur a one-hundred-dollar civil penalty.
 - (2) Any violation of this subsection that is remedied by the dog or cat in question being licensed within thirty (30) days of the issuance of the civil citation shall be dismissed.
 - (3) Any violation of this subsection that is not paid within sixty (60) days of the issuance of the civil citation shall have the fine doubled to two hundred dollars (\$200.00).
- (e) Violations of subsection 3-13(a) (number to be kept on premises) incur the following civil penalties:
 - (1) One hundred-dollar (\$100.00) fine for each dog over the limit.
 - (2) Subsequent violations are accrued every seven (7) days so long as the dogs remain on the property.
- (f) Violations of section 3-15 (Prohibited actions) incur the following civil penalties:
 - (1) *First violation after nuisance violation issued*—Fifty dollars (\$50.00).
 - (2) *Second violation after nuisance violation issued*—One hundred dollars (\$100.00).
 - (3) *Succeeding violations*—One hundred fifty dollars (\$150.00).
- (g) Violations of sections 3-17 (Confinement and control of dangerous animals) and 3-20 (Required notification to the animal control program by owners of dangerous animals or dangerous dogs) shall be assessed a five-hundred-dollar civil penalty and the animal shall be seized by the animal control officer or a Garner Police Officer.
- (h) If any dangerous animal shall, when unprovoked, attack, wound or otherwise injure or kill a human being, the owner shall be assessed a five-hundred-dollar civil penalty and the animal shall be seized by the animal control officer or a Garner Police Officer.
- (i) If any dangerous animal shall, when unprovoked, kill or wound or assist in killing or wounding any domestic animal or pet, the owner of said animal shall be assessed a two hundred-fifty-dollar civil penalty and the animal shall be seized by the animal control officer or a Garner Police Officer.
- (j) Violations of section 3-24 shall constitute a Class 2 misdemeanor.
- (k) A request for appeal regarding a violation of this section must be made in writing and filed with the town clerk within five (5) business days of the action or decision complained of and must state with particularity the grounds of the appeal. The appeal shall be heard by the appeals board constituted to hear appeals under section 3-43.
- (l) In addition, enforcement of this chapter may be by appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 11, 6-2-14; Ord. No. 3833, § 3, 11-22-16)

ARTICLE II. - RABIES CONTROL

Sec. 3-26. - Compliance with state law, article as supplement to state law.

- (a) It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.
- (b) It is the purpose of this article to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by state law.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-27. - Inoculation of dogs, cats and other pets.

- (a) It shall be unlawful for an owner to fail to provide current inoculation against rabies (hydrophobia) for any dog or cat four (4) months of age or older. Should it be deemed necessary by the county health director, the town council or the state public health veterinarian that other pets be inoculated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for an owner to fail to provide current inoculation against rabies for that pet.
- (b) A rabies inoculation shall be deemed "current" for a dog and cat if two (2) inoculations have been given one (1) year apart and booster doses of rabies vaccine are administered every three (3) years thereafter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-28. - Inoculation tag.

- (a) It shall be unlawful for any dog owner to fail to provide the dog with a collar or harness to which the dog's current rabies vaccination tag is securely attached. The collar or harness, with attached tag, must be worn at all times, except during the time the dog is hunting or is performing at shows, obedience trials, tracking tests, field trials, schools or other events sanctioned and supervised by a recognized organization. The owner must also maintain the rabies vaccination certificates as written evidence to prove that the dog has a current rabies inoculation.
- (b) It shall be unlawful for any person to use a rabies inoculation tag for any animal other than the one the tag is issued to.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-29. - Evidence of inoculation of cats.

Cats shall not be required to wear the metallic tag referred to in section 3-28 of this article. However, the owner of a cat shall be required to maintain the rabies vaccination certificates as written evidence to prove that the cat has a current rabies inoculation.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-30. - Report and confinement of animals biting persons or showing symptoms of rabies.

- (a) Every dog or cat which has bitten any person or which shows symptoms of rabies shall be confined immediately and shall be promptly reported to the animal control program, and thereupon shall be securely quarantined, at the direction of the animal control officer, for a period of ten (10) days, and shall not be released from such quarantine except by written permission from the animal control officer.
- (b) Dogs and cats quarantined under this section shall be confined in a veterinary hospital, boarding kennel or animal shelter at the expense of the owner; provided, however, that if the animal control

officer determines that the owner of an animal which must be quarantined has adequate confinement facilities upon his own premises or within the home, the animal control officer shall authorize the animal to be confined on such premises. The animal control officer may authorize the animal to be confined on the owner's premises when the owner has a fenced-in area in his yard and the fenced-in area has no entrances or exits that are not locked, and the animal is currently vaccinated against rabies. Proof will be required at the time of investigation. If the animal is confined on the owner's premises, the animal control officer shall visit the premises for inspection purposes at approximately the middle of the confinement period and again at the conclusion of the confinement period.

- (c) In the case of stray dogs or stray cats whose ownership is not known, the dogs or cats may be euthanized, and the head examined for rabies or kept for the supervised quarantine period required by this section at the animal shelter.
- (d) If rabies does not develop within ten (10) days after a dog or cat is quarantined under this section, the dog or cat may be released from quarantine with the written permission of the animal control officer. If the dog or cat has been confined in the animal shelter, the owner shall pay all fees owing to the animal control program and/or the animal shelter for harboring, caring for and maintaining the animal prior to the animal being released.
- (e) In the case of any carnivore or bat, the animal may be euthanized, and the head examined for rabies.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-31. - Destruction or confinement of animal bitten by rabid animal.

Unvaccinated animals bitten by a known rabid animal shall be immediately destroyed. If the animal has a current rabies inoculation, it shall be re-vaccinated and returned to the owner.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-32. - Area-wide emergency quarantine.

- (a) When a report indicates a positive diagnosis of rabies, the county director of public health may order an area-wide quarantine for such period, as he deems necessary. Upon invoking of such emergency quarantine, no dog, cat or other carnivores shall be taken into the streets or permitted to be in the streets during such period. During such quarantine, no dog, cat or other carnivore may be taken or shipped from the town without written permission of the animal control program, and the police department is hereby directed during such emergency to impound any dog, cat or other carnivore found running at large in the town. During the quarantine period, the animal control program or local health authorities shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the town.
- (b) In the event there are additional positive cases of rabies occurring during the period of quarantine, such period of quarantine may be extended at the discretion of the county director of public health.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-33. - Postmortem diagnosis.

- (a) If an animal dies while under observation for rabies, the head of such animal shall be submitted to the State Laboratory of Public Health for rabies diagnosis.
- (b) The carcasses of any animal suspected of dying of rabies shall be surrendered to the animal control program. The head of such animal shall be submitted to the State Laboratory of Public Health for rabies diagnosis.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-34. - Unlawful killing, releasing, etc. of certain animals.

It shall be unlawful for any person to kill or release any animal under observation for rabies, any animal suspected of having been exposed to rabies, or any animal biting a human, or to remove such animal from the town without written permission from the animal control officer.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-35. - Failure to surrender animal for quarantine or destruction.

It shall be unlawful for any person to fail or refuse to surrender any animal for quarantine or destruction as required in this article, when demand is made therefore by the animal control program.

(Ord. No. 3630, § 1, 8-1-11)

ARTICLE III. - IMPOUNDMENT

Sec. 3-36. - Generally.

Any animal which appears to be lost, stray or unwanted, or which is found to be not wearing a valid rabies vaccination tag, as required by state law or this chapter, or not under restraint in violation of this chapter, shall be impounded by the animal control program and confined in an animal shelter in a humane manner. Impoundment of such an animal shall not relieve the owner thereof from any penalty which may be imposed for violation of this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-37. - Notice to owner.

Immediately upon impounding an animal, the impounding officer shall make reasonable effort to notify the owner and inform such owner of the conditions whereby the animal may be redeemed. If the owner is unknown or cannot be located, notice of such impoundment shall be posted for five (5) days, or until the animal is disposed of, on a bulletin board at the animal shelter, and the time and place of the taking of such animal, together with the time and date of posting the notice shall be stated therein.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-38. - Redemption by owner generally.

- (a) The owner of an animal impounded under this article may redeem the animal and regain possession thereof within five (5) days after notice of impoundment is given or posted, as required by section 3-37, by complying with all applicable provisions of this chapter and paying all fees owing to the animal control program and/or the animal shelter for harboring, caring for and maintaining the animal.
- (b) No animal owner may be permitted to adopt his own animal under the provisions of section 3-39 in order to reclaim an animal that has been impounded pursuant to state law or this article.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-39. - Destruction or adoption or unredeemed animals generally.

- (a) If an impounded animal is not redeemed by the owner within the period prescribed in section 3-38, it may be destroyed in a humane manner or shall become the property of the animal shelter(s) and offered for adoption to any responsible adult who is willing to comply with this ordinance. Such animal may be adopted or purchased by the first such person who pays the adoption or purchase fee.
- (b) No animal which has been impounded by reason of its being a stray, unclaimed by its owner shall be allowed to be adopted from the animal shelter during a period of emergency rabies quarantine invoked pursuant to section 3-32, of this chapter, except by special authorization of the director of public health.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-40. - Suspected rabid animals not to be redeemed or adopted.

Notwithstanding any other provision of this article, animals impounded which appear to be suffering from rabies shall not be redeemed or adopted, but shall be dealt with in accordance with article II of this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-41. - Destruction of wounded or diseased animals.

Notwithstanding any other provision of this article, any animal impounded which is badly wounded or diseased (not a rabies suspect) and has no identification shall be destroyed immediately in a humane manner. If the animal has identification, the animal control program shall attempt to notify the owner before disposing of such, but if the owner cannot be reached readily, and the animal is suffering, the animal control program may destroy the animal at its discretion in a humane manner.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-42. - Security bond for impounded animals.

Any person claiming an interest in any animal confined by animal control due to cruelty charges must post a bond by cash or corporate surety with the town within seventy-two (72) hours of impoundment, in an amount sufficient to secure payment for all reasonable expenses incurred in providing care for the animal, including medical expenses, for a thirty-day period. However, such bond or security shall not prevent the authority having custody of the animal from disposing of such animal at the end of the thirty-day period unless the person claiming an interest posts an additional bond by cash or corporate surety with the town for another thirty-day period prior to the end of the previous thirty-day period.

The amount of the bond shall be determined by the animal control program based on actual costs of boarding and veterinary medical expenses incurred by the town. At the conclusion of the case, the bond shall be forfeited to the town unless there is a judicial determination that the owner is a fit person to own and care for the animal.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-43. - Appeal of section 3-25 and dangerous animal determination.

- (a) A request for appeal must be made in writing and filed with the town clerk within five (5) business days of the action or decision complained of and must state with particularity the grounds of the appeal. The appeals board shall consist of at least one assistant town manager and two (2) other employees

of departments other than the police department in the town to hear appeals of actions taken pursuant to this chapter or General Statutes § 67-4.1. This appeals board will be appointed by the town manager with appointees serving at the town manager's discretion until they are removed or ask to be replaced.

- (b) The appeals board shall render a decision within three (3) business days of the hearing.
- (c) If the decision is in favor of the owner, efforts to implement the sanction(s) shall cease.
- (d) Decisions rendered by the appeals board apply only to the violation(s) and sanction(s) appealed and do not prevent the animal control program from enforcing subsequent violations of the same provision or any other provision.
- (e) The decision of the appeals board is subject to appeal to superior court in the nature of certiorari.
- (f) The owner of the animal shall be responsible for all impoundment fees accrued during any and all appeals.
- (g) If the owner fails to pay all such impoundment fees, and the town is required to pay the same, the town shall have the right to seek recovery of the same in a civil action.

(Ord. No. 3833, § 4, 11-22-16)

Editor's note— Ord. No. 3833, § 4, adopted Nov. 22, 2016, repealed the former § 3-43, and enacted a new § 3-43 as set out herein. The former § 3-43 pertained to appeals and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011.

Chapter 3 - ANIMALS AND FOWL¹¹

Footnotes:

--- (1) ---

Editor's note— Ord. No. 3630, § 1, adopted Aug. 1, 2011, repealed the former ch. 3, §§ 3-1—3-43, and enacted a new ch. 3 as set out herein. The former ch. 3 pertained to similar subject matter and derived from Ord. No. 3598, § 1, adopted Sept. 21, 2010; Ord. No. 3199, § 1, adopted July 1, 2002; Ord. No. 3198, § 1, adopted July 1, 2002; Ord. No. 3192, §§ 1—9, adopted June 8, 2002; Ord. No. 3069, §§ 1—5, adopted Jan. 7, 2002; Ord. No. 3066, § 1, adopted Dec. 18, 2001; and Ord. No. 2989, § 1, adopted Sept. 7, 2000.

ARTICLE I. - IN GENERAL

Sec. 3-1. - Definitions.

Animal control officer means an employee or agent of the Town of Garner Animal Control Program authorized to enforce this chapter. By default, all sworn Garner Police Officers are empowered as animal control officers for the purposes of this chapter.

Animal shelter means any premises designated by the town for the purpose of impounding and caring for animals found running at large or otherwise subject to impounding in accordance with the provisions of this chapter.

At large means when any animal is off the property of its owner and not under the restraint of a competent person.

Attack means when an animal approaches and bites or otherwise makes physical contact with a person in a vicious, terrorizing or threatening manner without the animal having been teased, molested, provoked, beaten, tortured or otherwise harmed.

Attack training facility means any facility where a person, group of persons, partnership or corporation engages in boarding, breeding, selling and/or training dogs or other- animals for the purpose of having them attack.

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

Dangerous animal means any animal that has demonstrated a propensity or tendency to behave in a manner which may endanger persons or property and/or any non-domesticated animal indigenous to the State of North Carolina, including hybrid animals that are part-wild. This definition includes but is not limited to any dog which:

- (1) Bites, attacks or otherwise inflicts serious injury on a person without provocation on public or private property;
- (2) Kills or injures a pet or domestic animal without provocation;
- (3) Is owned, trained or harbored primarily or in part for the purpose of dog fighting; and/or
- (4) Approaches a person not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Dealer means any person who is licensed by the U.S. Department of Agriculture as an animal dealer.

Domestic animal means any animal, including but not limited to dogs, cats, horses, sheep, cattle, goats, hogs, poultry, etc., domesticated by man so as to live and breed in a tame condition.

Exhibitor means any person who is licensed by the U.S. Department of Agriculture as an animal exhibitor.

Exposed to rabies means when an animal has been bitten by or been exposed to any other animal known or suspected to have been infected with rabies.

Inherently dangerous mammal means any live member of the canidae, felidae or ursidae families, including hybrids thereof, which due to their inherent nature, may be considered dangerous to humans and include:

- (1) *Canidae*, including any member of the dog (canid) family not customarily domesticated by man, or any hybrids thereof, including wolf hybrids which are a cross between a wolf and a domesticated dog, but not including domesticated dogs (*canis familiaris*);
- (2) *Felidae*, including any member of the cat family weighing over fifteen (15) pounds not customarily domesticated by man, or any hybrids thereof, but not including domestic cats (*felis catus*); and
- (3) *Ursidae*, including any member of the bear family, or any hybrids thereof.

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

Neutered means any male animal which has been operated upon to prevent reproduction.

Noxious odor, for purposes of this section, means any odor resulting from the keeping of an animal (or animals) that can be identified on an adjacent property and interferes with the ordinary use and enjoyment of private or public property.

Owner, when used in the context of an animal, means any person, group or association of persons, firm, partnership or corporation owning, keeping, having charge of, taking care of, sheltering or frequently feeding an animal, or knowingly allows an animal owned by others to visit the owner's property. An owner is responsible for the care, actions and behaviors of his animal(s). In the event that the owner of an animal is a minor, the parent or guardian of such minor shall be held liable for non-compliance with the provisions of this chapter.

Owner, when used in the context of real property, means any person, group or association of persons, firm, partnership or corporation owning, renting or leasing real property, such that the secured enclosure requirement and other requirements of this chapter apply equally to a tenant or lessor as to an owner of real property.

Pet means a domesticated animal kept for pleasure rather than utility.

Restraint means an animal is under restraint within the meaning of this chapter if it is (1) controlled by means of a chain, leash or other like device; (2) secured within a vehicle; (3) within a secure enclosure; or (4) within the dwelling house of the owner.

Secure enclosure shall be a minimum size of fifteen (15) feet by eight (8) feet by eight (8) feet with a floor consisting of a concrete pad at least four (4) inches thick. The walls and roof of the structure must be constructed of welded chain link fencing with a minimum thickness of twelve (12) gauge supported by galvanized steel poles at least two and one-half (2½) inches in diameter. The vertical support poles must be sunk in concrete filled holes at least eighteen (18) inches deep and at least eight (8) inches in diameter. The chain link fencing must be anchored to a concrete pad with galvanized steel anchors placed at intervals no more than twelve (12) inches along the perimeter of the concrete pad.

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

Spayed means any female animal which has been operated upon to prevent conception.

Stray means any dog or cat that appears homeless or unwanted, and any dog that is not displaying a valid rabies tag unless exempted under subsection 3-28(a) of this chapter.

Untimely means occurring between the hours of 11:00 p.m. and 7:00 a.m.

Wild or exotic animal shall be defined as one which would ordinarily be confined to a zoo, one which would ordinarily be found in the wilderness of this or any other country, one which is a species of animal not indigenous to North America or one which otherwise causes a reasonable person to be fearful of significant destruction of property or of bodily harm. The latter includes, but is not limited to, such animals as monkeys, raccoons, squirrels, ocelots, bobcats, wolves, hybrid wolves and other such animals or any animal which causes zoonotic diseases.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 1, 6-2-14; Ord. No. 3833, § 1, 11-22-16)

Sec. 3-2. - Establishment and composition of the animal control program.

- (a) There is hereby created the Animal Control Program of the Town of Garner, hereinafter referred to as the animal control program, which shall be composed of such employees and or officials as shall be determined by the town council.
- (b) Employees or agents enforcing this chapter shall be designated as animal control officers. In the performance of their duties, animal control officers shall have all the powers, authority and immunity granted under this chapter and by the general laws of this state to enforce the provisions of this chapter and the General Statutes of North Carolina as they relate to the care, treatment, control or impounding of animals.
- (c) Except as may be otherwise provided by statutes, local laws or ordinances, no officer, agent or employee of the town charged with the duty of enforcing the provisions of this chapter or other applicable laws shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties unless he acts with actual malice.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-3. - General duties of the animal control program.

- (a) The animal control program shall be charged with the responsibility of:
 - (1) Enforcing all state and local laws, ordinances and resolutions relating to the care, custody and control of animals within the corporate limits of Garner;
 - (2) Assisting in the enforcement of the laws of the state with regard to animals and especially with regard to vaccination of animals against rabies and the confinement or controlling of dangerous animals and dangerous dogs;
 - (3) Investigating cruelty or abuse with regards to animals; and
 - (4) Conducting canvasses of the town, including the homes in the town, as necessary for the purpose of ascertaining that all animals are licensed and vaccinated against rabies as required by local ordinance or state statute.
- (b) It shall be the duty of the animal control program to keep, or cause to be kept, accurate and detailed records of:
 - (1) Impoundment and disposition of all animals coming into the town's custody;
 - (2) Complaints and investigations of bite cases; and
 - (3) All other records deemed necessary.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-4. - Dead animals.

It shall be unlawful for the owner of any dead animal, or the occupant of any land on which a dead animal is found, to fail to remove such dead animal, at the expense of said owner or occupant, to a place designated by the director of public works.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-5. - Horses, cattle, swine, chickens and other animals or fowl.

- (a) Livestock and domestic fowl of all descriptions except backyard hens (chickens only) are hereby prohibited in any area of the town except those areas zoned for agricultural purposes by the zoning ordinance. Furthermore, it shall be unlawful, regardless of zoning, for any person to maintain, keep, house or stable any horse, mule, pony, cow, sheep, goat, domestic fowl (excluding backyard hens) or livestock in the town within three hundred (300) feet of any dwelling, school, church, business, commercial or professional establishment. Not more than a total of three (3) horses, mules, ponies, cows, sheep, goats or other such animals shall be maintained on one (1) lot and such lot must contain no less than one (1) acre for each such animal maintained. No more than a total of four (4) domestic fowl (excluding backyard hens) shall be maintained on one (1) lot and such lot must contain no less than one (1) acre for each four (4) or fewer domestic fowl (excluding back hens) maintained.
- (b) It shall be unlawful for any person to maintain, keep, house, possess or have under their control within the town any swine, any venomous reptile or any other wild or exotic animal.
- (c) All animals or livestock referred to in subsection (a) shall be kept and maintained in an enclosed area. Stables shall be constructed and maintained in conformity with the requirements of the Wake County Board of Health. After the stable plans and area have been approved as to sanitation requirements by the health department, application shall then be made to the building inspector for a permit for such construction. In all cases, the structure shall be located so as to give the least possible offense to the occupants or residents on adjoining lots. All such stables shall be cleaned and disinfected at least once each week and kept free of noxious odors.
- (d) This section is not intended to and shall not apply to the passing of animals or livestock of an agricultural nature such as referred to in subsection (a) through the town or to their temporary use within the prohibited distances of occupied dwellings and buildings for plowing, hauling and similar purposes and other uses of a temporary nature such as exhibition, provided that such animals and livestock are not kept, stabled or maintained within the restricted areas. This section is not intended to and shall not apply to animals of a species customarily used in North Carolina as ordinary household pets, non-flesh-eating fish confined to an aquarium, birds or insects. It is not intended to and shall not apply to lawfully operated and located pet shops, animal-control shelters, scientific research laboratories, circuses and veterinary offices, provided such animals are maintained in quarters so constructed and maintained as to prevent escape.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, §§ 2, 3, 6-2-14)

Sec. 3-6. - Backyard hens.

- (a) *[In general.]* It is unlawful to keep backyard hens (i) without an approved permit, (ii) in violation of the terms of this section and a duly issued permit, or (iii) after a permit has been revoked.
- (b) *Backyard hen permit.* A backyard hen permit may be issued, regardless of zoning, on lots that contain single-family, duplex, triplex, quadruplex or townhome dwelling units, excluding apartment complexes and condominiums.
- (c) *Number permitted.* No more than eight (8) hens are allowed per lot regardless of size and number of dwelling units except in those areas zoned for agricultural uses. It shall be unlawful to keep or maintain any rooster.

- (d) *Uses.* All aspects of the keeping of hens, including keeping chicks, eggs, manure, compost and other related attributes and activities, must be only personal and non-commercial.
- (e) *Coop and run standards.*
 - (1) A coop is a roofed-housing structure where hens are kept. The coop has an indoor area where chickens sleep, perch, nest and lay eggs. The coop also provides shelter from weather and predators.
 - (2) A run is an enclosed pen located outside of the coop structure.
 - (3) An enclosed run is completely bounded on all sides, including overhead, by a fence, cage, or wire.
 - (4) An open run is bounded on all sides by a fence, cage, or wire but is open overhead.
 - (5) A coop, or combination coop and run of sufficient size should be provided for the hens to include a minimum coop area of four (4) square feet per chicken if a run is provided. A minimum of ten (10) square feet coop area is required if no run is provided or chickens are to be contained in the coop.
 - (6) Chickens shall be secured in the chicken coop during non-daylight hours. During daylight hours, chickens may be located in the run if provided. The coop and run shall be properly designed and constructed to provide adequate security from rodents, wild birds, and predators and provide sufficient ventilation.
 - (7) The maximum area for all coop and run structures is three hundred (300) square feet.
 - (8) The maximum height for a coop or run is seven (7) feet measured from the ground to the top of the structure.
 - (9) The minimum height for an open run is four (4) feet.
- (f) *Location.*
 - (1) All hens, coop structures, and runs must be located in the rear yard.
 - (2) Coop structures and runs must be located at least ten (10) feet from any rear or interior side lot line. For corner lots the corner-side yard setback shall be the same as the principal building.
- (g) *Maintenance.* All areas within the coop and run shall be kept in a neat and sanitary condition, including removal of droppings, uneaten feed, feathers and other waste, in order to preclude odors and other nuisance violations.
- (h) *Slaughter.*
 - (1) On-premises slaughter shall be prohibited as provided for under section 3-11 of the Town Code.
 - (2) Dead hens shall be removed according to the provisions of section 3-4 of the Town Code.
- (i) *Enforcement.*
 - (1) The planning department shall be responsible for administering and issuing backyard hen permits.
 - (2) The animal control officer shall be responsible for enforcing the provisions of Town Code regarding backyard hens.
 - (3) A backyard hen permit may be revoked by the planning director or designee when an individual fails to maintain the property in accordance with the approved permit and associated requirements or applicable requirements of the Town Code. Before a permit may be revoked, the planning department shall give the permit recipient ten (10) days' notice of the intent to revoke the permit and their right to obtain an informal hearing on the allegations. If the permit is revoked, the planning director or designee shall provide a written statement to the permit recipient of the decision and the reasons for it. Failure to remove the hens from the premises

within ten (10) days after permit revocation shall result in the matter being forwarded to the town attorney for immediate action.

(Ord. No. 3738, § 4, 6-2-14)

Sec. 3-7. - Reserved.

Editor's note— Section 1 of Ord. No. 3779, adopted July 7, 2015, repealed former § 3-7, which pertained to selling baby rabbits, and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011; and Ord. No. 3738, § 5, adopted June 2, 2014.

Sec. 3-8. - Reserved.

Editor's note— Section 1 of Ord. No. 3779, adopted July 7, 2015, repealed former § 3-8, which pertained to selling baby rabbits, baby chickens, ducklings, and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011; and Ord. No. 3738, § 6, adopted June 2, 2014.

Sec. 3-9. - Bird sanctuary.

- (a) The area embraced within the corporate limits of the town and all lands owned or leased by the town outside the corporate limits are hereby designated as a bird sanctuary.
- (b) It shall be unlawful to trap, hunt, shoot or otherwise kill, within the sanctuary established by paragraph (a), any native wild bird; provided, it shall be lawful to trap starlings or similar birds or fowl, or for an authorized Garner Police Officer to shoot the same, when such birds or fowl are found to be congregating in such numbers in a particular locality that they constitute a nuisance or a menace to health or property.
- (c) It shall be unlawful for any person, within the bird sanctuary, to shoot a bow or other similar contrivance, or to fire any pistol, gun or other firearm, except on archery ranges, firing ranges or in legally established shooting galleries or ranges, or in the discharge of duty by law enforcement officers, provided the use of firearms in the destruction of rodents or similar animals or reptiles that are considered a menace to public health or property may be permitted by special permission of the chief of police.
- (d) The bird clubs of the city are hereby granted permission to erect artistic signs at such places and of such design as may be approved by the town manager. Such signs shall give notice of the regulations prescribed by this section.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 7, 6-2-14)

Editor's note— See editor's note to § 3-7.

Sec. 3-10. - Unlawful to allow fowl to run at large.

It shall be unlawful for any person owning and keeping chickens and other domestic fowl to allow the fowl to be at large in the town.

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 8, 6-2-14)

Editor's note— Ord. No. 3738, § 9, adopted June 2, 2014, repealed former § 3-10, which pertained to roosters, and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011. See editor's note to § 3-7.

Sec. 3-11. - Cruelty to animals.

- (a) It shall be unlawful for any person to molest, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill, wound, injure, poison, abandon or subject to conditions detrimental to its health or general welfare any animal, or to cause or procure such action. The words "torture" and "torment" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit lawful shooting of birds, deer and other game for human food; nor to prohibit a veterinarian, the State of North Carolina Health Director or Animal Control Program agents from destroying dangerous, unwanted or injured animals in a humane manner nor to prohibit the lawful use of animals in scientific research.
- (b) Animals which are housed or maintained outside shall not be restrained by means of a device which is not at least fifteen (15) feet in length and of a size commensurate with the size of the animal, provided, however, that that no such restraint (also known as "tethering") is lawful on and after May 1, 2011, except as permitted in subsection (e) below.
- (c) Any animal housed outside must be provided shelter. This must have a solid roof, floor and three (3) sides so as to adequately protect against the elements. Any animal so housed must have access to clean water and food.
- (d) Dogs housed outdoors must be in fenced yards or pens. The pen shall be at least ten (10) feet by ten (10) feet for each dog under forty (40) pounds. Dogs weighing forty (40) pounds or greater must have a minimum pen size of at least ten (10) feet by twenty (20) feet for each dog. Each dog must have a dog house. If no natural shade is available in the pen, a cover for the pen must be provided.
- (e) It shall be unlawful to tether, fasten, chain, tie or restrain an unattended dog to any tree, fence, post, dog house or any other object, provided, however, that this ordinance shall not apply to dogs presently maintained in a fashion consistent with all existing town ordinances as of the effective date of this ordinance so long as their owner(s) register the dog within sixty (60) days of the effective date of this ordinance, with the registration form to contain a description of the dog (including name, breed, and age) and a current photograph of the dog.
- (f) "Attended tethering" shall be permitted if the owner or other responsible person is outside with the dog. Tethering of attended dogs shall be on a device of at least ten (10) feet long with a harness, collar or other device commensurate with the size of the dog.
- (g) An owner must remove the dog from a tether within thirty (30) days of being notified by the animal control officer and have the dog housed indoors or in an appropriate outdoor enclosure. The animal control officer shall have the authority to take custody of any dog which remains tethered after the thirty-day notification period. Any owner reclaiming a dog seized for violation of the tethering ordinance shall be required to show proof of suitable outdoor housing.
- (h) Any animal not reclaimed from the animal shelter within five (5) business days shall become the property of the town. The owner shall be responsible for any fees that accrue as a result of any animal being in the animal shelter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-12. - Licensing—Dogs and cats.

- (a) For every dog or cat six (6) months of age or older, a license shall be required and a one-time license fee in the amount of twenty-five dollars (\$25.00) shall be immediately due and payable to the town.
 - (1) Proof of a current rabies inoculation shall be required as a condition to obtaining a license under this section.
 - (2) The license fee for spayed or neutered dogs or cats shall be ten dollars (\$10.00), if satisfactory written documentation of such spaying or neutering from a licensed veterinarian is provided to the town at the time the fee is paid.
- (b) Upon learning of an unlicensed dog or cat in the town, the animal control officer shall issue a written warning to the animal's owner giving them thirty (30) days to comply with the licensing requirements herein. If a license has not been obtained after thirty (30) days, the owner will be issued a civil citation for the violation.
- (c) Reserved.
- (d) It shall be unlawful for any dog owner to fail to provide their dog with a collar or harness to which a current dog tag is securely attached. As further proof of registration, the collar or harness, with attached registration tag, must be worn at all times, except during the time the dog is hunting, or is performing at shows, obedience trials, tracking tests, field trials, schools, or other events sanctioned and supervised by a recognized organization.
- (e) It shall be unlawful for any person to use an animal registration tag for any animal other than the animal the tag is issued to.
- (f) Reserved.
- (g) Exemptions:
 - (1) The licensing requirements herein shall not apply to any animal kept in a commercially licensed kennel or other holding facility, used as a human assistance dog, used as a governmental police dog, or belonging to a nonresident of the town and kept within the boundaries of the town for not longer than thirty (30) days; provided, that all animals of nonresidents shall at the time of entry into the town be properly vaccinated against rabies, and while being kept within the town, shall meet all other requirements of this chapter.
 - (2) Owners of cats are hereby exempted from the provisions of this section related to the wearing of collars and display of tags.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-13. - Number to be kept on premises; sanitary quarters required.

- (a) It shall be unlawful for any person(s) to keep or maintain more than two (2) dogs on any lot or parcel of land having less than twenty thousand (20,000) square feet, and an additional seven thousand (7,000) square feet shall be required for each additional dog.
- (b) It shall be unlawful for the owner or custodian of any animal to maintain such animal in quarters that are not sanitary.
- (c) Exemptions: The requirements in subsection 3-13(a) shall not apply to:
 - (1) Dogs kept in an approved animal shelter, a veterinarian's facility, a commercially licensed kennel or any other commercially licensed holding facility.
 - (2) Participants certified by a well recognized professionally operated rescue organization provided animals are adopted out within one (1) year of receipt and provided the participant is registered with the Town of Garner.
 - (3) Dogs which are less than five (5) months of age.

- (4) Any dog for which the owner can provide a certificate issued by (1) the American Kennel Club (AKC) "Canine Good Citizen" training program that demonstrates that the dog is properly trained or (2) another bona fide, comprehensive training program that meets the same standards outlined in the AKC program, so long as any owner with more than the number of dogs allowed in subsection 3-13(a) has such a certificate for all of the dogs they own. The dogs requiring such training must be enrolled in an approved training program within thirty (30) days of the time that the number of dogs exceeds the allowable number of dogs according to this chapter. The training program must be completed successfully within twelve (12) months of the time that the number of dogs exceeds the allowable number of dogs according to this chapter.

(Ord. No. 3630, § 1, 8-1-11)

~~Sec. 3-14. - Animals at large.~~

- ~~(a) It shall be unlawful for any owner to permit an animal to be at large. The animal control officer shall confiscate any animal found to be at large and impound such animal at the animal shelter in accordance with the provisions of article III.~~
- ~~(b) Exemption: An owner may lawfully permit an animal which is not dangerous to be at large in the course of a show, obedience school, tracking tests, field training, or other events sanctioned or supervised by a recognized organization.~~

~~However, this provision does not exempt an owner from otherwise complying with section 3-14 or any other provision of this chapter.~~

(Ord. No. 3630, § 1, 8-1-11)

~~Sec. 3-15. - Animals creating nuisance.~~

- ~~(a) It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner so as to constitute a nuisance.~~
- ~~(b) The actions of an animal constitute a nuisance when an animal disturbs the rights of, threatens the safety of, or injures a member of the general public or interferes with the ordinary use and enjoyment of private or public property. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are hereby declared to be a nuisance and are therefore unlawful:
 - ~~(1) Maintaining an animal that on more than two (2) occasions damages or interferes with private property.~~
 - ~~(2) Failing to confine in a building or secure enclosure a female dog while in estrus.~~
 - ~~(3) Maintaining an animal that on more than two (2) occasions barks, whines, howls or yowls in an excessive, continuous or untimely fashion, or makes other noise in such a manner so as to result in an annoyance or interference with the reasonable use and enjoyment of neighboring premises.~~
 - ~~(4) Maintaining an animal that on more than two (2) occasions chases, snaps at, attacks or otherwise molests pedestrians, bicyclists, motor vehicle passengers or farm stock or domestic animals.~~
 - ~~(5) Maintaining an animal that on more than two (2) occasions is at large or loiters in public places or on the property of another.~~
 - ~~(6) Allowing any dog, on more than two (2) occasions, to leave its feces on public streets, sidewalks, town parks, other town property or the property of another without the permission of the owner of the property.~~~~

~~(7) Maintaining an animal that is diseased or dangerous to the health of the public or other domestic animals unless under the care of a licensed veterinarian.~~

~~(8) Maintaining any rooster that loudly and habitually crows.~~

~~(c) Upon receipt and verification by a Garner Police Officer or the animal control officer of a substantiated complaint that any person is maintaining a nuisance animal as defined in this section (excluding subsection (b)(4)), the owner shall be required to confine the nuisance animal in a secure enclosure as defined in within fifteen (15) days.~~

~~If the nuisance animal is not secured within fifteen (15) days, it will be impounded for a maximum of five (5) business days. If an approved secure enclosure is provided, the animal may be released from custody so long as all fees owing to the animal control program and/or the shelter for harboring, caring for and maintaining the animals are paid. All impoundment fees will be the responsibility of the animal's owner. If a secure enclosure is not provided by the end of the five (5) days, the animal will become property of the town and will be turned over to the animal shelter or other designated entity for disposition if no appeal has been filed.~~

~~(d) Upon receipt and verification by a Garner Police Officer or the animal control officer of a substantiated complaint that any person is maintaining a nuisance animal as defined in subsection (b)(4), the owner shall be required to fit the dog with an operable, appropriately sized anti bark device at the owner's expense within fifteen (15) days.~~

~~If the owner does not acquire and use the operable anti bark device within fifteen (15) days, the dog will be impounded for up to five (5) business days until the owner provides an operable anti bark device. If the owner provides an operable anti bark device, the dog may be released from custody so long as all fees owing to the animal control program and/or the animal shelter for harboring, caring for and maintaining the animal are paid. All impoundment fees will be the responsibility of the animal's owner. If the owner does not provide an operable anti bark device within five (5) days, the animal will become property of the town and will be turned over to the animal shelter for disposition if no appeal has been filed.~~

~~If the owner acquires and uses an operable anti bark device and it fails to stop the dog from barking, whining, howling or yowling it will be the owner's responsibility to find another humane method to prevent the barking, whining, howling or yowling within fifteen (15) days of the failure notification. Any receipt and verification of a subsequent incident of barking, whining, howling, or yowling will be considered evidence of failure of the anti bark device. If the owner fails to find an alternative humane way to prevent the dog from barking, whining, howling, or yowling within fifteen (15) days, the dog will be impounded for up to five (5) days. If the owner then provides another humane method the dog may be released from custody so long as all fees owing to the animal control program and/or the animal shelter for harboring, caring for and maintaining the animal are paid. If the owner has not provided another humane method to prevent the barking, whining, howling or yowling within five (5) days, the animal will become property of the town and will be turned over to the animal shelter for disposition if no appeal has been filed.~~

~~(e) The owner of a nuisance animal may appeal the nuisance declaration and/or an impoundment as outlined in section 3-43.~~

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 10, 6-2-14)

Sec. 3-16. - Confinement and control of inherently dangerous mammals.

(a) It shall be unlawful for any owner to keep an inherently dangerous mammal within the town.

(b) Exemptions: The following shall be exempt from this section:

(1) Any nonprofit institution or exhibitor or dealer which owns or harbors inherently dangerous mammals for research, provided that such institution/facility/premises are licensed by the U.S. Department of Agriculture or Interior.

(2) Traveling fairs, circuses and carnivals.

- (c) Recapturing. The owner of any inherently dangerous mammal shall reimburse the town for all costs incurred while attempting to recapture any escaped inherently dangerous mammal. If the animal is sheltered or euthanized by animal control, the owner shall also pay these costs.

(Ord. No. 3630, § 1, 8-1-11)

~~Sec. 3-17. – Confinement and control of dangerous animals.~~

- ~~(a) It is unlawful for any owner to maintain or harbor unconfined or unrestrained any animal which (1) bites, attacks or otherwise inflicts serious injury on a person without provocation on public or private property, (2) kills or injures a pet or domestic animal without provocation, (3) is owned, trained or harbored primarily or in part for the purpose of dog fighting and/or (4) approaches a person not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.~~
- ~~(b) The owner of a dangerous animal will be notified in writing to confine the animal in a humane, secure enclosure. The owner shall post a plainly visible sign upon the secure enclosure warning that a dangerous animal is on the premises. Said sign shall be one (1) foot by two (2) feet or two (2) square feet in area. The lettering on the sign shall be proportionate with the sign and must be approved by the animal control officer.~~
- ~~(c) The owner of a dangerous animal will be notified in writing that the dangerous animal must be leashed and muzzled at all times when the animal is not inside the owner's residence or in the secure enclosure.~~
- ~~(d) The owner of a dangerous animal will be notified in writing that the dangerous animal shall be permanently identified as a dangerous animal by a microchip implanted under the animal's skin within sixty (60) days from the date of notification at the owner's expense.~~
- ~~(e) The owner of a dangerous animal shall have sixty (60) days from the date of notification to provide a humane, secure enclosure. The animal deemed "dangerous" shall be kept at the animal shelter at the owner's expense during this period.~~
- ~~(f) If the owner of a dangerous animal constructs a secure enclosure which is approved by the animal control officer within the sixty (60) days, the animal can be released from confiscation so long as all fees owing to the Town of Garner Animal Control Program and the animal shelter for harboring, caring for and maintaining the animal are paid. If any dangerous animal is confiscated under this provision, the owner of the dangerous animal shall be given written notice at the time of confiscation that if the owner fails to provide a secure enclosure upon the expiration of sixty (60) days from the confiscation the animal will become property of the town and will be turned over to the animal shelter for disposition.~~
- ~~(g) It shall be unlawful for any owner of a dangerous animal to permit it to be at large.~~
- ~~(h) Only a competent person who is at least eighteen (18) years of age may remove a dangerous animal from the owner's property.~~
- ~~(i) The owner of a dangerous animal shall permit the animal control officer access to inspect the owner's premises as necessary to ensure compliance with state law and local ordinance.~~
- ~~(j) Once the owner of a dangerous animal has met all criteria for harboring a dangerous animal and approved by the animal control officer, the animal may be released to the owner from the animal shelter.~~

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3833, § 2, 11-22-16)

Sec. 3-18. - Requirements for an attack training facility.

It shall be unlawful for any person, group of persons, partnership or corporation to conduct training for dogs or other animals intended to prepare the animals to attack at any location unless such training is conducted within a secure enclosure.

Such training within a secure enclosure is within the meaning of this ordinance if it is performed within (1) a fence or structure of adequate height to prevent the dog or animal from jumping, climbing or otherwise escaping from the enclosure and (2) said training is conducted in the presence of the owner(s) or trainer(s) at all times.

Any dog or animal trained or being trained to attack is deemed to be dangerous and is subject to all the provisions of this ordinance relative to dangerous animals.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-19. - Reserved.

Sec. 3-20. - Required notification to the animal control program by owners of dangerous animals or dangerous dogs.

The owner of an animal declared dangerous under this article shall inform the animal control officer or a Garner Police Officer, as soon as practicable, but not later than twenty-four (24) hours, after the occurrence of any of the following:

- (1) An attack or biting upon any human being committed by the dangerous animal in the owner's care or control.
- (2) An attack or biting upon any domesticated animal or pet while the dangerous animal is off the owner's property.
- (3) The destruction of or damage to property of another by the dangerous animal.
- (4) The roaming or escape of any dangerous animal required to be restrained or confined to a secure enclosure.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-21. - Dogs or animals used for sentry or guard duty.

Any person owning, maintaining or harboring a dog or other animal for sentry or guard purposes must register said dog or animal with the animal control program.

The owner shall post a plainly visible sign warning that there is a guard or sentry dog or animal on the premises. Said sign shall not exceed one (1) foot by two (2) feet or two (2) square feet in area.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-22. - Teasing and molesting.

It shall be unlawful for any person to tease, bait, or in any way molest any animal.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-23. - Law enforcement dogs excluded.

Any dog used by a law enforcement agency in the investigation of crimes or as otherwise necessary in the enforcement of the law is excluded from requirements of this chapter with the exception that they are regulated by the provisions of articles II and III of this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-24. - Interference with enforcement of chapter.

It shall be unlawful for any person to interfere with, hinder or molest the animal control program agents or officers or veterinarians in the performance of any duty authorized by this chapter, or seek to release any animal in the custody of such, agents, except as otherwise specifically provided.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-25. - Imposition of penalties for violations of chapter.

- (a) Except as otherwise provided, any person who violates any provision of this chapter shall be assessed a civil penalty of one hundred dollars (\$100.00). If the violation continues, each day's violation shall constitute a separate offense. Any penalty not paid within thirty (30) days from the date of issuance will double. Civil penalties may be assessed by citation and recovered by the town in a civil action in the nature of a debt.
- (b) ~~Any person who violates subsection 3-5(d) regarding a noxious odor shall be provided written notice of the violation and an explanation of how to come into compliance with the ordinance violated. If the violation is not corrected within fifteen (15) days, the owner shall be assessed a civil penalty of one hundred dollars (\$100.00) and the animal(s) responsible for the odor will be seized for up to five (5) business days. If the odor is corrected within five (5) business days, the animal(s) may be released from custody so long as all fees owing to the animal control program and/or the animal shelter for harboring, caring for, and maintaining the animal(s) is paid. All impoundment fees will be the responsibility of the owner. If the violation is not corrected after five (5) days, the animal(s) will become property of the town and will be turned over to the animal shelter or other appropriate entity for disposition.~~
- (c) ~~Any person who violates sections 3-5 or 3-13 regarding the number of animals allowed shall be provided written notice of the violation and an explanation of how to come into compliance with the ordinance violated. If the violation is not corrected within fifteen (15) days, the owner shall be assessed a civil penalty of one hundred dollars (\$100.00) and the animal(s) most recently acquired that caused the violation will be seized for up to five (5) business days. If an arrangement to reduce the number of animals is provided within five (5) business days, the animal(s) may be released from custody so long as all fees owing to the animal control program and/or the animal shelter for harboring, caring for, and maintaining the animal(s) is paid. All impoundment fees will be the responsibility of the owner. If the violation is not corrected after five (5) days, unless an appeal to the animal review board is filed, the animal(s) will become property of the town and will be turned over to the animal shelter or other appropriate entity for disposition.~~
- (d) ~~Violations of subsection 3-12(a) (Licensing—Dogs and cats):~~
 - (1) ~~Any violation of this subsection shall incur a one hundred dollar civil penalty.~~
 - (2) ~~Any violation of this subsection that is remedied by the dog or cat in question being licensed within thirty (30) days of the issuance of the civil citation shall be dismissed.~~
 - (3) ~~Any violation of this subsection that is not paid within sixty (60) days of the issuance of the civil citation shall have the fine doubled to two hundred dollars (\$200.00).~~
- (e) ~~Violations of subsection 3-13(a) (number to be kept on premises) incur the following civil penalties:~~
 - (1) ~~One hundred dollar (\$100.00) fine for each dog over the limit.~~

- ~~(2) Subsequent violations are accrued every seven (7) days so long as the dogs remain on the property.~~
- ~~(f) Violations of section 3-14 (Animals at large) incur the following civil penalties:~~
- ~~(1) First violation Fifty dollars (\$50.00) plus shelter reclaim fee.~~
- ~~(2) Second violation One hundred dollars (\$100.00) plus shelter reclaim fee.~~
- ~~(3) Succeeding violations One hundred fifty dollars (\$150.00) plus shelter reclaim fee.~~
- ~~(g) Violations of sections 3-17 (Confinement and control of dangerous animals) and 3-20 (Required notification to the animal control program by owners of dangerous animals or dangerous dogs) shall be assessed a five hundred dollar civil penalty and the animal shall be seized by the animal control officer or a Garner Police Officer.~~
- ~~(h) If any dangerous animal shall, when unprovoked, attack, wound or otherwise injure or kill a human being, the owner shall be assessed a five hundred dollar civil penalty and the animal shall be seized by the animal control officer or a Garner Police Officer.~~
- ~~(i) If any dangerous animal shall, when unprovoked, kill or wound or assist in killing or wounding any domestic animal or pet, the owner of said animal shall be assessed a two hundred fifty dollar civil penalty and the animal shall be seized by the animal control officer or a Garner Police Officer.~~
- ~~(j) Violations of section 3-24 shall constitute a Class 2 misdemeanor.~~
- ~~(k) A request for appeal regarding a violation of this section must be made in writing and filed with the town clerk within five (5) business days of the action or decision complained of and must state with particularity the grounds of the appeal. The appeal shall be heard by the appeals board constituted to hear appeals under section 3-43.~~
- ~~(l) In addition, enforcement of this chapter may be by appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction.~~

(Ord. No. 3630, § 1, 8-1-11; Ord. No. 3738, § 11, 6-2-14; Ord. No. 3833, § 3, 11-22-16)

ARTICLE II. - RABIES CONTROL

Sec. 3-26. - Compliance with state law, article as supplement to state law.

- (a) It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.
- (b) It is the purpose of this article to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by state law.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-27. - Inoculation of dogs, cats and other pets.

- (a) It shall be unlawful for an owner to fail to provide current inoculation against rabies (hydrophobia) for any dog or cat four (4) months of age or older. Should it be deemed necessary by the county health director, the town council or the state public health veterinarian that other pets be inoculated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for an owner to fail to provide current inoculation against rabies for that pet.
- (b) A rabies inoculation shall be deemed "current" for a dog and cat if two (2) inoculations have been given one (1) year apart and booster doses of rabies vaccine are administered every three (3) years thereafter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-28. - Inoculation tag.

- (a) It shall be unlawful for any dog owner to fail to provide the dog with a collar or harness to which the dog's current rabies vaccination tag is securely attached. The collar or harness, with attached tag, must be worn at all times, except during the time the dog is hunting or is performing at shows, obedience trials, tracking tests, field trials, schools or other events sanctioned and supervised by a recognized organization. The owner must also maintain the rabies vaccination certificates as written evidence to prove that the dog has a current rabies inoculation.
- (b) It shall be unlawful for any person to use a rabies inoculation tag for any animal other than the one the tag is issued to.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-29. - Evidence of inoculation of cats.

Cats shall not be required to wear the metallic tag referred to in section 3-28 of this article. However, the owner of a cat shall be required to maintain the rabies vaccination certificates as written evidence to prove that the cat has a current rabies inoculation.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-30. - Report and confinement of animals biting persons or showing symptoms of rabies.

- (a) Every dog or cat which has bitten any person or which shows symptoms of rabies shall be confined immediately and shall be promptly reported to the animal control program, and thereupon shall be securely quarantined, at the direction of the animal control officer, for a period of ten (10) days, and shall not be released from such quarantine except by written permission from the animal control officer.
- (b) Dogs and cats quarantined under this section shall be confined in a veterinary hospital, boarding kennel or animal shelter at the expense of the owner; provided, however, that if the animal control officer determines that the owner of an animal which must be quarantined has adequate confinement facilities upon his own premises or within the home, the animal control officer shall authorize the animal to be confined on such premises. The animal control officer may authorize the animal to be confined on the owner's premises when the owner has a fenced-in area in his yard and the fenced-in area has no entrances or exits that are not locked, and the animal is currently vaccinated against rabies. Proof will be required at the time of investigation. If the animal is confined on the owner's premises, the animal control officer shall visit the premises for inspection purposes at approximately the middle of the confinement period and again at the conclusion of the confinement period.
- (c) In the case of stray dogs or stray cats whose ownership is not known, the dogs or cats may be euthanized and the head examined for rabies or kept for the supervised quarantine period required by this section at the animal shelter.
- (d) If rabies does not develop within ten (10) days after a dog or cat is quarantined under this section, the dog or cat may be released from quarantine with the written permission of the animal control officer. If the dog or cat has been confined in the animal shelter, the owner shall pay all fees owing to the animal control program and/or the animal shelter for harboring, caring for and maintaining the animal prior to the animal being released.
- (e) In the case of any carnivore or bat, the animal may be euthanized and the head examined for rabies.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-31. - Destruction or confinement of animal bitten by rabid animal.

Unvaccinated animals bitten by a known rabid animal shall be immediately destroyed. If the animal has a current rabies inoculation, it shall be re-vaccinated and returned to the owner.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-32. - Area-wide emergency quarantine.

- (a) When a report indicates a positive diagnosis of rabies, the county director of public health may order an area-wide quarantine for such period, as he deems necessary. Upon invoking of such emergency quarantine, no dog, cat or other carnivores shall be taken into the streets or permitted to be in the streets during such period. During such quarantine, no dog, cat or other carnivore may be taken or shipped from the town without written permission of the animal control program, and the police department is hereby directed during such emergency to impound any dog, cat or other carnivore found running at large in the town. During the quarantine period, the animal control program or local health authorities shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the town.
- (b) In the event there are additional positive cases of rabies occurring during the period of quarantine, such period of quarantine may be extended at the discretion of the county director of public health.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-33. - Postmortem diagnosis.

- (a) If an animal dies while under observation for rabies, the head of such animal shall be submitted to the State Laboratory of Public Health for rabies diagnosis.
- (b) The carcasses of any animal suspected of dying of rabies shall be surrendered to the animal control program. The head of such animal shall be submitted to the State Laboratory of Public Health for rabies diagnosis.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-34. - Unlawful killing, releasing, etc. of certain animals.

It shall be unlawful for any person to kill or release any animal under observation for rabies, any animal suspected of having been exposed to rabies, or any animal biting a human, or to remove such animal from the town without written permission from the animal control officer.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-35. - Failure to surrender animal for quarantine or destruction.

It shall be unlawful for any person to fail or refuse to surrender any animal for quarantine or destruction as required in this article, when demand is made therefore by the animal control program.

(Ord. No. 3630, § 1, 8-1-11)

ARTICLE III. - IMPOUNDMENT

Sec. 3-36. - Generally.

Any animal which appears to be lost, stray or unwanted, or which is found to be not wearing a valid rabies vaccination tag, as required by state law or this chapter, or not under restraint in violation of this chapter, shall be impounded by the animal control program and confined in an animal shelter in a humane manner. Impoundment of such an animal shall not relieve the owner thereof from any penalty which may be imposed for violation of this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-37. - Notice to owner.

Immediately upon impounding an animal, the impounding officer shall make reasonable effort to notify the owner and inform such owner of the conditions whereby the animal may be redeemed. If the owner is unknown or cannot be located, notice of such impoundment shall be posted for five (5) days, or until the animal is disposed of, on a bulletin board at the animal shelter, and the time and place of the taking of such animal, together with the time and date of posting the notice shall be stated therein.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-38. - Redemption by owner generally.

- (a) The owner of an animal impounded under this article may redeem the animal and regain possession thereof within five (5) days after notice of impoundment is given or posted, as required by section 3-37, by complying with all applicable provisions of this chapter and paying all fees owing to the animal control program and/or the animal shelter for harboring, caring for and maintaining the animal.
- (b) No animal owner may be permitted to adopt his own animal under the provisions of section 3-39 in order to reclaim an animal that has been impounded pursuant to state law or this article.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-39. - Destruction or adoption or unredeemed animals generally.

- (a) If an impounded animal is not redeemed by the owner within the period prescribed in section 3-38, it may be destroyed in a humane manner or shall become the property of the animal shelter(s) and offered for adoption to any responsible adult who is willing to comply with this ordinance. Such animal may be adopted or purchased by the first such person who pays the adoption or purchase fee.
- (b) No animal which has been impounded by reason of its being a stray, unclaimed by its owner shall be allowed to be adopted from the animal shelter during a period of emergency rabies quarantine invoked pursuant to section 3-32, of this chapter, except by special authorization of the director of public health.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-40. - Suspected rabid animals not to be redeemed or adopted.

Notwithstanding any other provision of this article, animals impounded which appear to be suffering from rabies shall not be redeemed or adopted, but shall be dealt with in accordance with article II of this chapter.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-41. - Destruction of wounded or diseased animals.

Notwithstanding any other provision of this article, any animal impounded which is badly wounded or diseased (not a rabies suspect) and has no identification shall be destroyed immediately in a humane manner. If the animal has identification, the animal control program shall attempt to notify the owner before disposing of such, but if the owner cannot be reached readily, and the animal is suffering, the animal control program may destroy the animal at its discretion in a humane manner.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-42. - Security bond for impounded animals.

Any person claiming an interest in any animal confined by animal control due to cruelty charges must post a bond by cash or corporate surety with, the town within seventy-two (72) hours of impoundment, in an amount sufficient to secure payment for all reasonable expenses incurred in providing care for the animal, including medical expenses, for a thirty-day period. However, such bond or security shall not prevent the authority having custody of the animal from disposing of such animal at the end of the thirty-day period unless the person claiming an interest posts an additional bond by cash or corporate surety with the town for another thirty-day period prior to the end of the previous thirty-day period.

The amount of the bond shall be determined by the animal control program based on actual costs of boarding and veterinary medical expenses incurred by the town. At the conclusion of the case, the bond shall be forfeited to the town unless there is a judicial determination that the owner is a fit person to own and care for the animal.

(Ord. No. 3630, § 1, 8-1-11)

Sec. 3-43. - Appeal of section 3-25 and dangerous animal determination.

- (a) ~~A request for appeal must be made in writing and filed with the town clerk within five (5) business days of the action or decision complained of and must state with particularity the grounds of the appeal. The appeals board shall consist of the assistant town manager and two (2) employees of departments other than the police department in the town to hear appeals of actions taken pursuant to this chapter or General Statutes § 67-4.1. This appeals board will be appointed by the town manager with appointees serving at the town manager's discretion until they are removed or ask to be replaced.~~
- (b) The assistant town manager shall render a decision within three (3) business days of the hearing.
- (c) If the decision is in favor of the owner, efforts to implement the sanction(s) shall cease.
- (d) Decisions rendered by the appeals board apply only to the violation(s) and sanction(s) appealed and do not prevent the animal control program from enforcing subsequent violations of the same provision or any other provision.
- (e) The decision of the appeals board is subject to appeal to superior court in the nature of certiorari.
- (f) The owner of the animal shall be responsible for all impoundment fees accrued during any and all appeals.

(g) If the owner fails to pay all such impoundment fees, and the town is required to pay the same, the town shall have the right to seek recovery of the same in a civil action.

(Ord. No. 3833, § 4, 11-22-16)

Editor's note— Ord. No. 3833, § 4, adopted Nov. 22, 2016, repealed the former § 3-43, and enacted a new § 3-43 as set out herein. The former § 3-43 pertained to appeals and derived from Ord. No. 3630, § 1, adopted Aug. 1, 2011.

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: June 30, 2020		
Subject: Extension of COVID-19 Pay		
Location on Agenda: Reports		
Department: Human Resources		
Contact: BD Sechler, Human Resources Director		
Presenter: BD Sechler, Human Resources Director		
<p>Brief Summary:</p> <p>COVID-19 pay was approved for our sworn police officers and GVFR firefighters through June 30, 2020. We have since learned that through the CARES Act, Wake County will reimburse the Town for 75% of the costs going forward. As a result, we recommend continuing the practice of providing hazard pay until Wake County discontinues its EOC or Council determines it should end.</p>		
<p>Recommended Motion and/or Requested Action:</p> <p>Consider our recommendation to continue hazard pay beyond June 30, 2020</p>		
<p>Detailed Notes:</p> 		
<p>Funding Source: General Fund and CARES Act/Wake County</p>		
Cost:	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input type="radio"/>
<p>Manager's Comments and Recommendations: Net cost to the Town of Garner is ~\$7,500/month.</p>		
<p>Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/></p>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	BDS	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: June 30, 2020		
Subject: Review Draft Job Description and Recruitment Process for Town Attorney		
Location on Agenda: Reports		
Department: Administration		
Contact: Matt Royslance, Assistant Town Manager - Operations		
Presenter: Matt Royslance, Assistant Town Manager - Operations		
<p>Brief Summary:</p> <p>The Town has been operating with an interim Town Attorney since Bill Anderson retired in late 2019. Council has indicated they are ready to fill this position with a full-time employee rather than a contract position as was the previous practice. A draft job description is attached for Council's review and discussion, along with an outline of the recruitment process. If Council concurs after this discussion, the creation of the Town Attorney position will be included on the July 7, 2020, meeting agenda for formal action.</p>		
<p>Recommended Motion and/or Requested Action:</p> <p>Discussion and feedback on the draft job description and recruitment process.</p>		
<p>Detailed Notes:</p> 		
<p>Funding Source:</p>		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
<p>Manager's Comments and Recommendations:</p> 		
<p>Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/></p>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	MR	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Town Attorney

General Statement of Duties

Performs complex legal work and advises staff and elected officials on legal issues.

Note: This is an unclassified position, and salary is dependent on qualifications.

Description

The Town Attorney reports directly to the Mayor and Town Council but works closely with the Town Manager's Office. Work includes conducting legal research on a variety of topics and providing legal counsel to elected officials and staff.

Examples of Duties and Responsibilities

Duties include drafting and reviewing contracts and negotiating contract terms; researching and drafting ordinances, resolutions, leases, deeds, and other legal documents; acquiring real estate interests; interpreting policies, rules and regulations and rendering legal opinions in both oral and written forms. Attends regular and special Council meetings and advises Council on conflicts of interest, meeting procedures and legal issues. May represent the Town in civil proceedings and in litigation independently or in partnership with outside counsel.

Serves as a Department Director and develops and maintains legal department budget and serves as a member of the Town's management team.

Knowledge, Skills and Abilities

Considerable knowledge of the functions of municipal governments.

Considerable knowledge of legal principles, precedents, and practices and their application to functions of local government.

Considerable knowledge of the North Carolina General Statutes, environmental and natural resources laws, administrative law and State and Federal Constitutional law.

Considerable knowledge of current legislation affecting municipalities and boards.

Considerable knowledge of the Town's policies and procedures and of the Town's organization, departments, and functions.

Considerable knowledge of judicial and quasi-judicial procedures and the rules of evidence.

General working knowledge of the application of information technology to work tasks.

Strong analytical and writing skills.

Skill in collaborative conflict resolution, negotiation, and meeting facilitation.

Ability to analyze the legal aspects of governmental problems and to provide sound advice and assistance to officials.

Ability to present facts, law, and arguments clearly, logically, and persuasively in both written and oral forms.

Ability to draft ordinances, regulations, policies, rules, opinions and orders.

Ability to interpret and apply constitutional provisions, statutes, administrative regulations, court decisions and other precedents.

Ability to conduct legal research and analyze facts, evidence, and legal instruments.

Ability to maintain effective working relationships with elected officials, Town Manager and department heads and other employees, outside attorneys and the public.

Ability to exercise sound judgment.

Physical Requirements

Must be able to physically perform the basic life operational functions of fingering, talking and hearing.

Must be able to perform sedentary work exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently or constantly to move objects.

Must possess the visual acuity to work with data and figures, use a computer, and do extensive reading and writing.

Minimum and Preferred Qualifications

Law degree from a recognized school of law and considerable professional legal experience, preferably in a local government setting, or an equivalent combination of experience and education.

Special Requirements

Licensed to practice law in the State of North Carolina.

Successful completion of State Bar required hours of annual CLE credits.

DRAFT

Town Attorney Process and Schedule

Task	Date
Working Group finalizes draft job description	6/23/20
Council discusses draft job description and recruitment process	6/30/20
Council approves job description and creates Town Attorney position	7/7/20
Staff works with Rick to create position brochure	7/8/20 – 7/15/20
Staff posts job	7/17/20 – 8/7/20
HR screens applicants to remove those that don't meet minimums	8/10/20 – 8/12/20
Working Group (including Fred) reviews/scores screened applicants	8/14/20 – 8/21/20
Working Group (including Fred) conducts initial interviews and selects finalists	9/9/20 – 9/11/20
Finalists interview with Council (closed session prior to regular meeting)	9/22/20
Council discusses candidates, selects preferred candidate, and gives negotiating parameters	9/22/20
Working Group representative negotiates details with successful candidate	9/23/20 – 9/25/20
Estimated start date	Mid-to-Late October 2020