

## EXHIBIT B

### THE CHARTER OF THE TOWN OF CARY\*

#### Article I. Incorporation and General Powers

- Sec. 1.1. Incorporation and general powers.
- Sec. 1.2. Enumerated powers not exclusive.
- Sec. 1.3. Exercise of powers.
- Sec. 1.4. Form of government.

#### Article II. Corporate Boundaries

- Sec. 2.1. Existing corporate boundaries.
- Sec. 2.2. Extension of corporate boundaries.

#### Article III. Mayor and Town Council

- Sec. 3.1. Form of government.
- Sec. 3.2. Number and qualification of Council members and Mayor generally.
- Sec. 3.3. Legislative powers.
- Sec. 3.4. General procedure.
- Sec. 3.5. Vacancies.

#### Article IV. Officers and Employees; Boards and Commissions

- Sec. 4.1. Compensation and reimbursement for expenses of elected officers.
- Sec. 4.2. Appointment of officers and assistants.
- Sec. 4.3. Town Manager.
- Sec. 4.4. Town Attorney.
- Sec. 4.5. Town Clerk.
- Sec. 4.6. Town Treasurer.
- Sec. 4.7. Combination of offices of Town Treasurer and Town Clerk.
- Sec. 4.8. Terms of commissions, committees, and boards.

#### Article V. Finance and Taxation

- Sec. 5.1. Custody of Town money.
- Sec. 5.2. Independent audit.
- Sec. 5.3. Road project regulatory or development fee.

---

\***Editor's note**—Printed herein is Ord. No. 06-007, as adopted on April 27, 2006 and effective on such date. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform citations to state statutes, and expression of numbers in text as appears in the City Code has been used. A consistent scheme of capitalization has also been used. Additions for clarity are indicated by brackets. The preamble to such ordinance reads as follows:

**State law reference**—Cities and towns, G.S. § 160A-1 et seq.

## CARY CODE OF ORDINANCES

- Sec. 5.4. Motor vehicle taxes.
- Sec. 5.5. Settlement of claims by Town Manager.

### **Article VI. Street and Sidewalk Improvements**

- Sec. 6.1. Street improvement defined.
- Sec. 6.2. Street improvements; assessment of cost.
- Sec. 6.3. When petition unnecessary.
- Sec. 6.4. Sidewalks; assessment of cost.
- Sec. 6.5. Assessment procedure.
- Sec. 6.6. Effect of assessment.

### **Article VII. Water and Sewer Improvements**

- Sec. 7.1. Laterals included in cost.
- Sec. 7.2. Classification and exemption.
- Sec. 7.3. Alternative method of assessing.
- Sec. 7.4. Payment of assessments.
- Sec. 7.5. Water and sewer development fees.

### **Article VIII. Regulatory, Police and Miscellaneous Powers**

- Sec. 8.1. Subdivision regulations.
- Sec. 8.2. Zoning regulations.
- Sec. 8.3. Regulatory codes.
- Sec. 8.4. Underground utilities.
- Sec. 8.5. Electric golf carts.
- Sec. 8.6. Procedure for permanently closing streets and alleys.
- Sec. 8.7. Acquisition of property outside corporate limits.
- Sec. 8.8. Construction of roadways outside corporate limits.
- Sec. 8.9. Acquisition of utility rights-of-way when acquiring street rights-of-way.
- Sec. 8.10. Reimbursement of developers for design and construction of public infrastructure.
- Sec. 8.11. Compliance with Swift Creek Management Plan.
- Sec. 8.12. Standing of Town to enforce Swift Creek Management Plan.
- Sec. 8.13. Ordinances regulating trees and shrubs generally.
- Sec. 8.14. Ordinances regulating clear-cutting of trees in buffer zones and protection of specimen tree.
- Sec. 8.15. Traffic control photographic system (red light cameras).
- Sec. 8.16. Issuing licenses for closing-out sales in accordance with N.C. General Statutes Article 17, Chapter 66.
- Sec. 8.17. Allowing the Town of Cary to adopt ordinances regulating demolition of historic structures in their historic districts.
- Sec. 8.18. Granting authority to the Town of Cary to require developers of multifamily units to provide funds for recreational land to serve multifamily developments.
- Sec. 8.19. Authorizing the Town of Cary to use electronic means to provide public notice for certain public hearings.
- Sec. 8.20. Granting authority to the Town of Cary to provide development incentives in exchange for reductions in energy consumption.

## CHARTER

### **Article IX. Legal Status Provisions and Interpretation**

- Sec. 9.1. References to General Statutes and Session Laws.
- Sec. 9.2. Purpose.
- Sec. 9.3. Repealer.
- Sec. 9.4. Acts not repealed.
- Sec. 9.5. Prior Acts not revived.
- Sec. 9.6. Existing ordinances, resolutions, rules and regulations.
- Sec. 9.7. Private rights or interests not effected.
- Sec. 9.8. Pending actions.
- Sec. 9.9. Severability.

CARY CODE OF ORDINANCES

**ORDINANCE 06-007**

ORDINANCE ADOPTING REVISIONS TO THE TOWN CHARTER OF THE TOWN OF CARY, NORTH CAROLINA

WHEREAS, the Town Council of the Town of Cary petitioned the North Carolina General Assembly for the authority to make certain revisions to the Town Charter; and

WHEREAS, the North Carolina General Assembly enacted those revisions in 2005 N.C. Sess. Laws 117; and

WHEREAS, G.S. 160A-496 allows a municipality to incorporate local acts into its charter; and

WHEREAS, G.S. 160A-496 further provides that the Town Council may make modifications in arrangement or form that do not change the provisions themselves of the charter or local acts and that may be necessary to effect an orderly incorporation of local acts into the charter; and

WHEREAS, Ordinance 06-001 incorporated local acts into the Town Charter that had not been included in 2005 N.C. Sess. Laws 117;

WHEREAS, Municipal Code Corporation acting under the direction of the Town Attorney has incorporated into the Charter the additional local acts that had not been incorporated into 2005 N.C. Sess. Laws 117 and has made modifications in arrangement or form of the Charter that do not change the provisions themselves of the Charter or local acts and that are necessary to effect an orderly incorporation of local acts into the Charter; and

NOW, THEREFORE, be it ordained, by the Town Council of the Town of Cary, North Carolina that:

The attached charter is hereby adopted. Any reference in any ordinance to the charter as the charter existed prior to the adoption of this ordinance shall be deemed to be a reference to the successor provision in the attached charter.

This ordinance shall become effective on April 27, 2006.

Adopted: April 27, 2006

The Charter follows:

**ARTICLE I. INCORPORATION AND GENERAL POWERS****Section 1.1. Incorporation and general powers.**

The Town of Cary shall continue to be a body politic and corporate under the name and style of the "Town of Cary", and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold, or in any manner conveyed or dedicated to



it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

(N.C.S.L. Ch. 2005-117, § 1(1.1); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—General corporate powers, G.S. § 160A-11.

### **Section 1.2. Enumerated powers not exclusive.**

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Cary shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

(N.C.S.L. Ch. 2005-117, § 1(1.2); Ord. No. 06-001, § 1, 2-9-2006)

### **Section 1.3. Exercise of powers.**

All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or if this Charter makes no provision, as provided by ordinance or resolution of the Town Council and as provided by general law pertaining to municipal corporations.

(N.C.S.L. Ch. 2005-117, § 1(1.3); Ord. No. 06-001, § 1, 2-9-2006)

### **Section 1.4. Form of government.**

The form of government of the Town of Cary shall be known as the "Council-Manager Form of Government", as set forth in Part 2 of Article 7 of Chapter 160A of the General Statutes (G.S. 160A-147 et seq.) subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Cary from being changed as by law provided.

(N.C.S.L. Ch. 2005-117, § 1(1.4); Ord. No. 06-001, § 1, 2-9-2006)

## **ARTICLE II. CORPORATE BOUNDARIES**

### **Section 2.1. Existing corporate boundaries.**

The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated "Map of the Town of Cary Corporate Limits" showing the corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated "Description of Cary Corporate Limits". Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and a description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to

law from time to time, the Town Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

(N.C.S.L. Ch. 2005-117, § 1(2.1); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Corporate limits generally, G.S. 160-22.

### **Section 2.2. Extension of corporate boundaries.**

All extensions of the corporate boundaries shall be governed by general law.

(N.C.S.L. Ch. 2005-117, § 1(2.2); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—State law reference—Annexation, G.S. 160A-29 et seq.

## **ARTICLE III. MAYOR AND TOWN COUNCIL**

### **Section 3.1. Form of government.**

The government of the Town and the general management and control of all its affairs shall be vested in a Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.

(N.C.S.L. Ch. 2005-117, § 1(3.1); Ord. No. 06-001, § 1, 2-9-2006)

### **Section 3.2. Number and qualification of Council members and Mayor generally.**

(a) The Town Council shall consist of six members, two of whom shall be elected at large by all the qualified voters of the Town, and four of whom shall be elected by the qualified voters of each of four single-member electoral districts, respectively, as established by the Town Council pursuant to the law. Terms of Council members shall be overlapping four-year terms. In the 2001 election and quadrennially thereafter, there shall be elected, for four-year terms, one Council member from Electoral District A, one Council member from Electoral District C, and one Council member from the Town at large. In the 2003 election and quadrennially thereafter, there shall be elected, for four-year terms, one Council member from Electoral District B, one Council member from Electoral District D, and one Council member from the Town at large.

(b) The Mayor shall be elected by all the qualified voters of the Town, for a term of four years, in the 2003 election and quadrennially thereafter. The Mayor shall have the right to vote on all matters before the Town Council.

(c) The method of election of the Mayor and Town Council shall be the nonpartisan election and runoff method to be conducted as provided in G.S. 163-293.

(N.C.S.L. Ch. 2005-117, § 1(3.2); Ord. No. 06-001, § 1, 2-9-2006)

### **Section 3.3. Legislative powers.**

All the legislative powers of the Town shall be vested in the Mayor and Town Council. The Mayor and Town Council shall meet at the time prescribed by law following each election, and those



elected shall take the oath of office as prescribed by law to perform faithfully the duties of their respective offices. The Mayor shall have all rights, duties, and responsibilities of a council member. A Mayor Pro Tempore shall be elected by the Town Council from among its own members and shall hold office as Mayor Pro Tempore during the pleasure of the Council. The organization of the Council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefore, may make oath at any time thereafter.

(N.C.S.L. Ch. 2005-117, § 1(3.3); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 3.4. General procedure.**

A majority of the members of the Town Council shall constitute a quorum. Its meetings shall be public, and the Mayor, who shall be the official head of the Town, shall, if present, preside and shall have the same power as the other members of the Council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the Mayor, the Mayor Pro Tempore of the Council shall preside, and in the absence of both, a Chair Pro Tempore shall be chosen. The Town Clerk shall be ex officio Clerk of the Town Council, and shall keep records of its proceedings; but in case of the Clerk's temporary absence, or in case of a vacancy in the office, the Town Council may elect by ballot a temporary Clerk, who shall be sworn to the faithful discharge of his duties and may act as Clerk of the Town Council until a Town Clerk is chosen and qualified. On request of one member, the vote shall be yeas, and nays, and shall be entered upon the records.

(N.C.S.L. Ch. 2005-117, § 1(3.5); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 3.5. Vacancies.**

Vacancies in the Town Council shall be filled by the Council for the remainder of the unexpired terms. In case of a vacancy in the office of Mayor, the remaining members of the Council shall choose from their own number his successor for the unexpired term.

(N.C.S.L. Ch. 2005-117, § 1(3.6); Ord. No. 06-001, § 1, 2-9-2006)

### **ARTICLE IV. OFFICERS AND EMPLOYEES; BOARDS AND COMMISSIONS\***

#### **Section 4.1. Compensation and reimbursement for expenses of elected officers.**

The Council may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officers may be made effective at such time as the Council may direct, but the salary of elected officers shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other Town officers and employees.

(N.C.S.L. Ch. 2005-117, § 1(3.7); Ord. No. 06-001, § 1, 2-9-2006)

\*State law reference—Administrative officers, G.S. 160A-146 et seq.



**Section 4.2. Appointment of officers and assistants.**

The Town Council shall appoint a Town Manager, a Town Attorney, a Town Clerk, and a Town Treasurer, and may authorize the appointment of such associates or assistants to such officers as the Council may deem necessary, all who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.

(N.C.S.L. Ch. 2005-117, § 1(3.8); Ord. No. 06-001, § 1, 2-9-2006)

**Section 4.3. Town Manager.**

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government, and shall be responsible for the administration of all departments. The manager shall be appointed with regard to executive and administrative abilities only and need not be a resident of the Town when appointed. The manager shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(b) The Town Manager shall:

- (1) Be the administrative head of the Town government;
- (2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed;
- (3) Attend all meetings of the Council, and recommend for adoption such measures as he shall deem expedient;
- (4) Make reports to the Council from time to time upon the affairs of the Town and keep the Council fully advised of the Town's financial condition and its future financial needs.
- (5) Appoint and remove all heads of departments, except those employees enumerated in Section 4.2 of this Charter, who shall be appointed by and serve at the pleasure of the Town Council.

(N.C.S.L. Ch. 2005-117, § 1(3.9); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Town manager, G.S. 160A-146 et seq.

**Section 4.4. Town Attorney.**

The Town Attorney shall be the legal advisor to the Town and perform such duties as may be specified by the Council or specified by law. The attorney shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The attorney shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(N.C.S.L. Ch. 2005-117, § 1(3.10); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Municipal attorney, G.S. 160A-173.

**Section 4.5. Town Clerk.**

The Town Clerk shall be the Clerk to the Town Council, keep all records concerning Council actions and shall exercise those powers and duties conferred by the law and shall perform such

duties as may be specified by the Council. The Clerk shall be appointed with regard to merit only, and need not be a resident of the Town when appointed. The Clerk shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(N.C.S.L. Ch. 2005-117, § 1(3.11); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Municipal clerk, G.S. 160A-171.

#### **Section 4.6. Town Treasurer.**

(a) The Town Treasurer shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The Treasurer shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance. The Town Treasurer shall be custodian of all funds of the Town.

(b) The Treasurer shall execute a bond payable to the Town, and at its expense, in such sum and with such sureties as shall be prescribed and approved by the Council conditioned upon the faithful performance of the duties of the office and proper accounting of all funds that may come into this person's possession by virtue of the office. Duties of the Treasurer include:

- (1) Manage the cash flows of the Town.
- (2) Be responsible for the investment of excess cash under the direction of the Finance Director.
- (3) Keep appropriate records for cash flow and investments.
- (4) Make reports as requested by the Town Manager, the Finance Director, and the Council.

(N.C.S.L. Ch. 2005-117, § 1(3.12); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 4.7. Combination of offices of Town Treasurer and Town Clerk.**

The Town Council may combine the office of Town Treasurer with the office of Town Clerk in its sole discretion.

(N.C.S.L. Ch. 2005-117, § 1(3.15); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 4.8. Terms of commissions, committees, and boards.**

The Town Council may:

- (1) Fix the terms of members of all commissions, committees, and boards of the Town regardless of the terms established by law for particular commissions, committees or boards;
- (2) Appoint the chair or other presiding officer of each commission, committee, or board of the Town, regardless of the provisions of any law; and
- (3) Limit the number of terms which any person may serve on any commission, committee, or board of the Town.

(N.C.S.L. Ch. 2005-117, § 1(3.16); Ord. No. 06-001, § 1, 2-9-2006)

**ARTICLE V. FINANCE AND TAXATION\*****Section 5.1. Custody of Town money.**

All monies received by the Town for and in connection with the business of the Town government shall be paid promptly into the Town depository or depositories. Such institution shall be designated by the Town Council in accordance with such regulations and subject to such requirements as to surety for deposits and interest thereon as shall be established by general law. All interest on monies belonging to the Town shall accrue to the benefit of the Town. All monies belonging to the Town shall be disbursed only in accordance with the provisions of the Local Government Budget and Fiscal Control Act (G.S. 159-7 et seq.).

(N.C.S.L. Ch. 2005-117, § 1(7.1); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Depositories, G.S. 159-31.

**Section 5.2. Independent audit.**

As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered pursuant to general law, who shall have no personal interest directly or indirectly in the affairs of the Town or any of its officers. The Town Council shall select the public accountant and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Town Council.

(N.C.S.L. Ch. 2005-117, § 1(7.2); Ord. No. 06-001, § 1, 2-9-2006)

**Section 5.3. Road project regulatory or development fee.**

(a) The Town of Cary shall have the right, power, and authority to impose and collect a regulatory or development fee defined as a road project fee on all new construction within the Town limits and extraterritorial jurisdiction.

(b) It is the purpose and intent of this section to provide the Town with the legal mechanism granting it the right, power, and authority to impose and collect fees to finance additional improvements within the Town limits and extraterritorial jurisdiction. These additional road improvements being caused by rapid and continued growth within the Cary area. This section provides approval to the Town to actually develop and implement such a fee system, but does not in any way, describe or detail the actual fee structure and rate classification. An extensive study will subsequently be performed to establish the basis and framework for the fee system should the system be deemed necessary in order to maintain the high level of service delivery presently available to Cary residents.

(N.C.S.L. Ch. 2005-117, § 1(7.4); Ord. No. 06-001, § 1, 2-9-2006)

**\*State law references**—Local government finance, G.S. 159-1 et seq.; municipal taxation, G.S. 160A-206 et seq.



**Sec. 5.4. Motor vehicle taxes.**

All taxes levied under the provisions of Article 3, Chapter 20 of the North Carolina General Statutes (G.S. 20-39 et seq.) are intended as compensatory taxes for the use and privileges of the public highways of the State of North Carolina, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and the Town of Cary shall not levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that the Town of Cary may levy not more than ten dollars (\$10.00) per year upon any vehicle resident therein. Provided, further, that the Town of Cary may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in the Town of Cary as a taxicab.

(N.C.S.L. Ch. 1993-325; Ord. No. 06-001, § 6, 2-9-2006)

**Section 5.5. Settlement of claims by town manager.**

The Town Manager may, without the approval of the Town Council, settle claims against the Town for personal injuries or damages to property when the amount involved does not exceed the sum of two thousand five hundred dollars (\$2,500.00) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident or occasion complained of.

(N.C.S.L. Ch. 2005-117, § 1(10.1); Ord. No. 06-001, § 1, 2-9-2006)

**ARTICLE VI. STREET AND SIDEWALK IMPROVEMENTS\*****Section 6.1. Street improvement defined.**

For the purpose of this article the term "street improvement" shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities.

(N.C.S.L. Ch. 2005-117, § 1(6.3); Ord. No. 06-001, § 1, 2-9-2006)

**Section 6.2. Street improvements; assessment of cost.**

In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this article.

(N.C.S.L. Ch. 2005-117, § 1(6.1); Ord. No. 06-001, § 1, 2-9-2006)

**\*State law references**—Special assessments, G.S. 160A-216 et seq.; construction of sidewalks, G.S. § 136-66.1.



**Section 6.3. When petition unnecessary.**

The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

- (1) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or
- (2) That it is in the public interest to connect two streets, or portions of a street already improved, or
- (3) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portions of street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this article.

(N.C.S.L. Ch. 2005-117, § 1(6.2); Ord. No. 06-001, § 1, 2-9-2006)

**Section 6.4. Sidewalks; assessment of cost.**

(a) In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council may order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners.

(b) If a sidewalk is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists a sidewalk, on the other side of the street, the total cost of which has been assessed against the abutting property.  
(N.C.S.L. Ch. 2005-117, § 1(6.4); Ord. No. 06-001, § 1, 2-9-2006)

**Section 6.5. Assessment procedure.**

In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

(N.C.S.L. Ch. 2005-117, § 1(6.5); Ord. No. 06-001, § 1, 2-9-2006)

**Section 6.6. Effect of assessment.**

The effect of the act of levying assessments under the authority of this article shall for all purposes be the same as if assessed where levied under authority of general law.

(N.C.S.L. Ch. 2005-117, § 1(6.6); Ord. No. 06-001, § 1, 2-9-2006)

**ARTICLE VII. WATER AND SEWER IMPROVEMENTS****Section 7.1. Laterals included in cost.**

In ordering water or sewer line extensions, or both, the assessment of the cost thereof under the authority given by the General Statutes, the Town Council may include in such extensions water and sewer line laterals, and include the cost of such laterals in the total cost to be assessed upon abutting properties.

(N.C.S.L. Ch. 2005-117, § 1(8.1); Ord. No. 06-001, § 1, 2-9-2006)

**Section 7.2. Classification and exemption.**

Where water or sewer lines are constructed across or through lots or tracts of land or when water or sewer lines, or both, are installed along both sides of corner lots and were or are financed in whole or in part by assessment, the Council may by uniform rule classify such lines for assessment as in its judgment will represent the benefits derived. The schedules of exemptions may be classified as to land uses (residential, business, commercial, industrial, office and institutional, agricultural, or other classifications) and shall be uniform for each such classification used; provided, however, that no schedule of exemptions may provide for exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

(N.C.S.L. Ch. 2005-117, § 1(8.2); Ord. No. 06-001, § 1, 2-9-2006)

**Section 7.3. Alternative method of assessing.**

(a) In addition to, and as alternatives to, the method provided in the General Statutes for assessing the cost of water and sewer lines and laterals, the Town Council, if in its opinion it would be more equitable to do so, may in its discretion levy any such assessments according to either of the following methods:

- (1) Equally against each of the lots capable of being served by such line or lines; or
- (2) On the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

(b) In lieu of assessing the total cost of a particular project as herein provided, the Town Council may annually, between the first days of January and July of each year, determine the average cost of installing water and sewer mains or lines, and on the basis of such determination may make assessments on such average cost during the following fiscal year beginning July 1. The average cost of such installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and materials cost based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such lines shall not be made until after the particular assessment project has been completed. The purposes of this section are to distribute more equitably the cost of the installation of water and sewer lines throughout the Town and to permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his property will be; and to permit the most expeditious assessment of cost against the property



after completion of installation of such lines. The actual cost of acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation cost at the time of the completion of the project, such costs may be assessed separately when they are determined. (N.C.S.L. Ch. 2005-117, § 1(8.3); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 7.4. Payment of assessments.**

Any special assessment of the Town for any purpose amounting to less than one hundred dollars (\$100.00) shall be paid in cash not later than the next due date of Town taxes rather than in annual installments and shall bear interest as taxes.

(N.C.S.L. Ch. 2005-117, § 1(8.4); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 7.5. Water and sewer development fees.**

In addition to water and sewer service charges and connection charges, the Town Council may establish and collect water and sewer development fees for the privilege of connecting to the Town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water and sewer mains and laterals and sewer outfalls and the replacement or enlargement of existing mains, laterals, and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, however, that the Council may establish higher water and sewer development fees for property developed or to be developed for business, commercial, industrial, or office and institutional uses than those established for residential and other uses and may base water and sewer development fees for residential property upon the number of dwelling units per acre of land.

(N.C.S.L. Ch. 2005-117, § 1(8.5); Ord. No. 06-001, § 1, 2-9-2006)

### **ARTICLE VIII. REGULATORY, POLICE AND MISCELLANEOUS POWERS**

#### **Section 8.1. Subdivision regulations.**

Any subdivision control ordinance enacted by the Town Council pursuant to general law may also provide for the orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing, and guttering; and street and storm drainage facilities in accordance with Town standards and specifications, and to assure compliance with such requirements, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

(N.C.S.L. Ch. 2005-117, § 1(9.1); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Planning and development, G.S. 160A-206.

#### **Section 8.2. Zoning regulations.**

(a) In addition to the authority conferred upon it by general or local law, the Town of Cary may create, through the legislative process, general use zoning districts, in which a variety of uses are permitted; conditional use zoning districts, in which limited uses are permitted only upon approval by the Town; overlay zoning districts, which are applied coincidental with the general or conditional use district; and transitional zoning regulations.

(b) The overlay zoning districts may impose additional regulations on some property within the underlying general or conditional use district and not on all properties within those districts.

(c) A person petitioning for rezoning of a tract of land where conditional use districts or overlay districts are authorized by ordinance, may elect to request a general use district, a conditional use district, or an overlay district for the tract. If the petitioner elects to petition for the general use or overlay district zoning, and if the petition is approved, the rezoned property may be used for any of the uses permitted in the applicable general use or overlay district. If the petitioner elects to petition for conditional use district zoning, the petition must specify the actual use or uses, and all other development regulations authorized by State law, which are intended for the property specified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district. If the petition is for conditional use district zoning, the Town Council is to approve or disapprove the petition on the basis of the specific use or uses and development regulations requested. If the petition is approved, the Town Council shall issue a conditional use permit authorizing the requested use with such reasonable conditions as the Town Council determines to be desirable in promoting public health, safety, and general welfare.

(d) The conditions contained in a conditional use permit issued by the Town Council may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the Town Council may find appropriate or the petitioner may propose, including architectural review or controls.

(e) It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and ensure that substantial justice be done.

(N.C.S.L. Ch. 2005-117, § 1(9.1); Ord. No. 06-001, § 1, 2-9-2006)

**State law reference**—Planning and development, G.S. 160A-206.

### **Section 8.3. Regulatory codes.**

The Town Council may make effective and enforce within the territory under its extraterritorial zoning jurisdiction and lying outside the corporate limits and within one mile thereof, all ordinances and codes of the Town regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to the General Statutes, and ordinances relating to unsafe buildings adopted pursuant to the provisions of the General Statutes. In addition, the Town Council may enforce in such area the North Carolina State Building Codes, including Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy, Existing Buildings, and Residential, all as published by the North Carolina Building Code Council. Such enforcement power shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate



permit or permits be obtained from the Town; provided, the Town Council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

(N.C.S.L. Ch. 2005-117, § 1(9.2); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 8.4. Underground utilities.**

In addition to the powers now or hereafter granted to municipalities by law, the Town Council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the Town be installed underground, whether or not the same are installed in public rights-of-way.

(N.C.S.L. Ch. 2005-117, § 1(9.3); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 8.5. Electric golf carts.**

Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town. By ordinance, the Town may require the registration of golf carts, specify the persons authorized to operate golf carts, and specify required equipment, load limits, and the hours and methods of operation of the golf carts.

(N.C.S.L. Ch. 2005-117, § 1(9.4); Ord. No. 06-001, § 1, 2-9-2006)

#### **Section 8.6. Procedure for permanently closing streets and alleys.**

(a) When the Town of Cary proposes to permanently close any street or public alley, the Council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the Council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. The court shall hear the matter de novo, and shall have full jurisdiction to try the issues arising and to order the street or alley closed upon proper findings of fact by the jury. No cause of action or defense founded upon the invalidity

of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

(d) This section shall apply to any street or public alley within the Town of Cary that has been irrevocably dedicated to the public, without regard to whether it has actually been opened.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) The Town of Cary may reserve its right, title, and interest in any utility improvement or easement within a street closed pursuant to this section. Such reservation shall be stated in the order of closing.

(N.C.S.L. Ch. 1989-279; Ord. No. 06-001, § 3, 2-9-2006)

#### **Section. 8.7. Acquisition of property outside corporate limits.**

(a) The Town of Cary may acquire by purchase or eminent domain the fee or any lesser interest in real property, which is located outside the corporate limits of the Town of Cary, for use under G.S. 160A-296(a)(3) only if the street for which right-of-way is to be acquired is in a comprehensive plan adopted under G.S. 136-66.2, and for which an agreement for right-of-way acquisition has been reached under G.S. 136-66.3.

(b) Acquisition of property outside the corporate limits by purchase or condemnation under Subsection (a) of this section may be exercised only as provided by G.S. 160A-240.1(b).

(c) The Town of Cary may acquire property outside its corporate limits by purchase or eminent domain under G.S. 160A-296(a)(3) only as provided by G.S. 160A-240.1(b).

(N.C.S.L. Ch. 1993-137; Ord. No. 06-001, § 5, 2-9-2006)

#### **Section. 8.8. Construction of roadways outside corporate limits.**

(a) The Town of Cary may appropriate funds not otherwise limited as to use by law to construct roadways in areas outside its corporate boundaries and outside its extraterritorial planning and zoning jurisdiction only if those roadways are owned by the State of North Carolina and maintained by the Department of Transportation.

(b) The Town of Cary may, but is not required to, participate in the right-of-way and construction cost of a State highway improvement approved by the Board of Transportation under G.S. 143B-350(f)(4).

(N.C.S.L. Ch. 2001-245; Ord. No. 06-001, § 10, 2-9-2006)



**Section. 8.9. Acquisition of utility rights-of-way when acquiring street rights-of-way.**

When acquiring rights-of-way for the construction or improvement of streets, the Town may also locate and acquire such additional rights-of-way as may be necessary for the present or future location or relocation, above or below ground, of telephone, telegraph, electric, and other lines, as well as gas, water, sewerage, oil, and other pipelines to be operated by public utilities defined and regulated under Chapter 62 of the General Statutes. In acquiring real property by eminent domain for these purposes, the Town may use the procedures of either Chapter 40A or Chapter 136 of the General Statutes.

(N.C.S.L. Ch. 2003-74, Ord. No. 06-001, § 12, 2-9-2006)

**Section. 8.10. Reimbursement of developers for design and construction of public infrastructure.**

(a) The Town of Cary may enter into reimbursement agreements with private developers and property owners for the design and construction of public infrastructure that is included on the Town's Capital Improvement Plan and serves the developer or property owner. For the purpose of this section, public infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) The Town of Cary shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) The Town of Cary may provide for such reimbursements to be paid from any lawful source.

(d) No reimbursement pursuant to an agreement authorized by this section shall be deemed to be construction subject to Article 8 of Chapter 143 of the North Carolina General Statutes (G.S. 143-48 et seq.) or to be deemed to be a violation or evasion of any provision of said Article. Notwithstanding the foregoing provisions of this subsection, a construction contract subject to a reimbursement agreement authorized by this section shall not be awarded by a developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the Town of Cary.

(N.C.S.L. Ch. 2005-41; Ord. No. 06-001, § 13, 2-9-2006)

**Section. 8.11. Compliance with Swift Creek Management Plan.**

(a) The Town of Cary shall not adopt any ordinance authorized by Article 18 of Chapter 153A of the General Statutes (G.S. 153A-320 et seq., Article 19 of Chapter 160A of the General Statutes (G.S. 160A-360 et seq.), or under any local Act or Charter provision relating to the subject of those Articles, nor grant any permit or approval pursuant to those ordinances, that would be inconsistent with the standards and provisions of the Swift Creek Management Plan.

(b) This section applies to any zoning map amendment and to any other zoning amendment, modification, repeal, or changes in zoning regulations and restrictions or zone boundaries relating to the area set forth in the Swift Creek Management Plan, but shall not be construed to prevent the Town of Cary from adopting zoning ordinance text changes.

(c) This section shall not affect any valid and unexpired vested right of any landowner arising by law pursuant to G.S. 153A-344.1 or G.S. 160A-385.1, nor shall this section affect the right of any person to protest zoning changes or otherwise appeal planning, subdivision, or zoning actions as provided by Article 18 of Chapter 153A of the General Statutes (G.S. 153A-320 et seq.), or Article 19 of Chapter 160A of the General Statutes (G.S. 160A-360 et seq.), or by local ordinance.

(d) If the Town of Cary has an ordinance to effectuate the recommended minimum performance standards for the Swift Creek Watershed and the other specific features set forth in the Swift Creek Management Plan, then the Town of Cary may modify its zoning ordinance to further meet or exceed the requirements of the Swift Creek Management Plan. The Swift Creek Management Plan may be modified by interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes entered into by all of the affected jurisdictions.

(e) The Town of Cary may extend utilities unilaterally to any portion of its jurisdiction subject to the Swift Creek Management Plan provided that, prior to October 22, 1998, the Town of Cary zoned or rezoned the subject area in anticipation of providing utilities to the area.  
(N.C.S.L. Ch. 1998-192; Ord. No. 06-001, § 7, 2-9-2006)

#### **Sec. 8.12. Standing of Town to enforce Swift Creek Management Plan.**

(a) The Town of Cary, as a party to the Swift Creek Management Plan, shall have standing to contest an action of another party to the Swift Creek Management Plan that the Town Council for the Town of Cary believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of Section 8.11 of this Charter.

(b) Any person who resides in the Town of Cary and who also resides in the Swift Creek watershed shall have standing to contest an action of any party to the Swift Creek Management Plan that the person believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of Section 8.11 of this Charter, provided that the person has a specific personal or legal interest in the action and is adversely affected thereby.

(c) The Town of Cary or person who has standing under subsection (a) or (b) of this section may file a petition in the superior court of Wake County seeking review of the action of a local government that the Town of Cary or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of Section 8.11 of this Charter. A petition under this section shall be filed no later than sixty (60) days after the adoption, amendment, or repeal of the ordinance, the grant of the permit



or approval, an extension of any utility, or other action the local government or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of subsections (a) through (c) of Section 8.11 of this Charter.

(d) A petition filed under this section shall state with specificity what exceptions are taken to the action of the respondent local government and what relief the petitioner seeks. Within fifteen (15) days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent local government shall transmit to the court a copy of the ordinance, permit, or approval and any other minutes or documents that constitute the record of the challenged action.

(e) The court may hear oral arguments, receive written briefs, and take evidence on the question of whether or not there has been a violation of subsections (a) through (c) of Section 8.11 of this Charter.

(f) If the court determines that there has been a violation of subsections (a) through (c) of Section 8.11 of this Charter, it shall declare the ordinance, permit, approval, or other action void and may order any additional relief that appears appropriate.

(g) This section shall not be construed to preclude a judicial determination, based on common-law principles, statutory provisions, or other law, that standing exists in a particular case for a person to bring an action to challenge an alleged violation of the Swift Creek Management Plan and the provisions of subsections (a) through (c) of Section 8.11 of this Charter.  
(N.C.S.L. Ch. 2005-89; Ord. No. 06-001, § 14, 2-9-2006)

### **Sec. 8.13. Ordinances regulating trees and shrubs generally.**

(a) In order to preserve and enhance one of the most valuable natural resources of the community and to protect the safety and welfare of its citizens, the Town of Cary may adopt ordinances to regulate the planting, removal, and preservation of trees and shrubs on public and private property within the Town. Any ordinance adopted pursuant to this section shall exclude property to be developed for single-family or duplex residential uses and shall exclude normal forestry activities conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes.

(b) Prior to adopting an ordinance authorized by subsection (a) of this section, a public hearing shall be held before the Town Council for the Town of Cary. Notice of the hearing shall be given in accordance with G.S. 160A-364.

(N.C.S.L. Ch. 2000-108; Ord. No. 06-001, § 8, 2-9-2006)

### **Sec. 8.14. Ordinances regulating clear-cutting of trees in buffer zones and protection of specimen tree.**

(a) The Town of Cary may adopt ordinances to regulate the removal and preservation of existing trees and shrubs prior to development within a perimeter buffer zone of up to sixty-five (65) feet along roadways and property boundaries adjacent to developed properties and up to thirty-two (32) feet along property boundaries adjacent to undeveloped properties. All such buffer zones shall be

measured from the outside boundary of any property, including property zoned for residential and nonresidential use. The purpose of such ordinances shall be to protect existing trees and shrubs for use as future buffers.

(b) Ordinances adopted pursuant to this section shall be limited to situations where undeveloped property is planned or zoned for residential or nonresidential use in accordance with adopted Town plans and zoning regulations. Such ordinances shall include reasonable provisions for access onto and within the subject property.

(c) Notwithstanding any limitations contained in subsection (a) of this section, the Town may adopt ordinances to regulate the preservation and removal of significant specimen or "champion" trees on sites being planned for new development. Specific standards for identifying and designating such trees, including species and size, shall be incorporated as part of any such ordinance.

(d) Any ordinance adopted pursuant to this section shall exclude normal forestry activities on property taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes. However, for such properties, a municipality may deny a building permit or refuse to approve a site or subdivision plan for a period of five years following harvest if all or substantially all of the perimeter buffer trees which should have been protected were removed from the tract of land for which the permit or plan approval is sought.

(e) Before adopting an ordinance authorized by this section, the Council shall hold a public hearing on the proposed ordinance. Notice of the public hearing shall be given in accordance with G.S. 160A-364.

(f) Nothing in this section shall be construed to limit or be limited by any provisions of Section 8.12 of this Charter or any other existing laws or ordinances.  
(N.C.S.L. Ch. 2001-191; Ord. No. 06-001, § 9, 2-9-2006)

#### **Sec. 8.15. Traffic control photographic system (red light cameras).**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subsection (a) of this section, installed on a street or highway which is a part of the state highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a street within the Town of Cary shall meet standards established by the Town of Cary and shall be consistent with any standards set by the Department of Transportation.



(c) Any traffic control photographic system installed on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than three hundred (300) feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with the Town of Cary.

(d) The Town of Cary may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. If the Town of Cary adopts an ordinance pursuant to this section then, notwithstanding G.S. 20-176, a violation of G.S. 20-158 detected only by a traffic control photographic system shall not be an infraction. If a violation of G.S. 20-158 is detected by both a law enforcement officer and a traffic control photographic system, the officer may charge the offender with an infraction. If the officer charges the offender with an infraction, a civil penalty issued by the Town of Cary for the same offense is void and unenforceable. An ordinance authorized by this subsection shall provide that:

- (1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within thirty (30) days after receiving notification of the violation, furnishes the office of the mayor any one of the following:
  - a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle at the time of the violation.
  - b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.
  - c. An affidavit stating that the person who received the citation is not the owner or driver of the vehicle, or that the person who received the citation was not driving a vehicle at the time and location designated in the citation.
- (2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.
- (3) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars (\$50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.
- (4) The owner of the vehicle shall be issued a citation that shall be attached to photographic evidence of the violation that identifies the vehicle involved. The citation shall clearly state the manner in which the violation may be challenged. The owner of the vehicle shall comply with the directions on the citation. The citation shall be processed by officials or agents of the Town of Cary and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall



have waived the right to contest responsibility for the violation and shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00). The Town of Cary may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

- (5) The Town of Cary shall establish a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The Town of Cary may establish an appeals panel composed of town employees to review objections. If the Town of Cary does not establish an appeals panel composed of town employees, the mayor shall review and make a final decision on all objections.

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.

(f) The Town of Cary upon enacting an ordinance implementing a traffic control photographic system may enter into a contract with a contractor for the lease, lease-purchase, or purchase of the system. The Town of Cary may enter into only one contract for the lease, lease-purchase, or purchase of the system and the duration of the contract may be for no more than sixty (60) months. After the period specified in the contract has expired, the system shall either be the property of the Town of Cary or the system shall be removed and returned to the contractor.

(g) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the Wake County school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the traffic control photographic system; paying a contractor for operating the system; and paying any administrative costs incurred by the Town of Cary related to the use of the system.

(N.C.S.L. Ch. 2001-286; N.C.S.L. Ch. 2003-380; Ord. No. 06-001, § 11, 2-9-2006)

**Section 8.16. Issuing licenses for closing-out sales in accordance with N.C. General Statutes Article 17, Chapter 66.**

(a) The town council is authorized to designate an officer other than the town clerk to issue closing-out sale licenses.

(Ord. No. 2007-17, § 1, 10-11-07)

(N.C.S.L. 2007-22; N.C.S.L. 2002-33; G.S. 66-77)

**Section 8.17. Allowing the Town of Cary to adopt ordinances regulating demolition of historic structures in their historic districts.**

(a) In order to preserve and enhance one of the most valuable and unique natural resources of the community, and to preserve the property values and promote the general welfare of its citizens, a municipality may adopt ordinances to regulate the demolition of historic structures within its municipal corporate limits and extraterritorial jurisdiction. For purposes of this act, the term "historic structures" means:

- (1) Any designated local, State, or national landmark; or,

- (2) Any structure that is:
- a. Individually listed in the National Register of Historic Places;
  - b. Individually identified as a contributing structure in a historic district listed in the National Register of Historic Places;
  - c. Certified or preliminarily determined by the Secretary of the Interior as contributing to the significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - d. Individually listed in the State inventory of historic places;
  - e. Individually listed in the county Register of Historic Places; or,
  - f. Individually listed in a local inventory of historic places in communities with historic preservation programs that have been certified by an approved State program (including certified local governments) as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

(b) Prior to adopting an ordinance under this act, a public hearing shall be held before the governing board of the municipality. Notice of the hearing shall be given in accordance with G.S. 160A-364. An ordinance adopted under this act may not prohibit the demolition of historic structures except in accordance with the provisions of Part 3C of Article 19 of Chapter 160A of the General Statutes.

(Ord. No. 2007-17, § 1, 10-11-2007)

**State law reference**—N.C.S.L. 2007-66

**Section 8.18. Granting authority to the Town of Cary to require developers of multifamily units to provide funds for recreational land to serve multifamily developments.**

The Town of Cary may, by ordinance, provide that a developer of multifamily units that are not subject to the subdivision ordinance shall provide funds to the town whereby the town may acquire recreational land or areas to serve the multifamily development, including the purchase of land that may be used to serve more than one multifamily development or residential subdivision within the immediate area. All funds received by the town pursuant to this section may be combined with funds received from residential subdivisions under G.S. 160A-372, and shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this section shall be based on a flat fee per unit. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the town council determines that this combination is in the best interests of the citizens of the area to be served.

(Ord. No. 2007-17, § 1, 10-11-2007)

**State law reference**—N.C.S.L. 2007-321

**Section 8.19. Authorizing the Town of Cary to use electronic means to provide public notice for certain public hearings.**

The governing body of a city or town may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the Town's Internet site. Ordinances adopted pursuant to this section shall not supersede any State law that requires notice by mail to certain classes of people or the posting of signs on certain property and shall not alter the publication schedule for any public notice.

**State law reference**—N.C.S.L. 2008-5



**Section 8.20. Granting authority to the Town of Cary to provide development incentives in exchange for reductions in energy consumption.**

Land-Use Development Incentives. Counties and municipalities, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder within the county or municipality and its extraterritorial planning jurisdiction if the developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

**State law reference**—N.C.S.L. 2008-22

**ARTICLE IX. LEGAL STATUS PROVISIONS AND INTERPRETATION**

**Section 9.1. References to General Statutes and Session Laws.**

(a) Whenever a reference is made in this Charter to a particular provision of the North Carolina General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

(b) In this Charter the abbreviation "G.S." refers to the North Carolina General Statutes.

(c) The provisions of this subsection do not apply to acts codified or compiled in the North Carolina General Statutes. Acts found in the North Carolina Session Laws are referenced in this Charter with the abbreviation "N.C.S.L. Ch.", followed by the year and/or chapter number. For example, a reference to N.C.S.L. Ch. 2005-117 is a reference to Chapter 2005-117 of the 2005 Session Laws of North Carolina and a reference N.C.S.L. Ch. 1979-1275 is to Chapter 1275 of the 1979 Session Laws of North Carolina. Whenever a reference is made in this Charter to a particular act found in the Session Laws and such Act is later amended, repealed, or superseded by another act found in the Session Laws, the reference shall be deemed amended to refer to the amended Act that most nearly corresponds to the statutory provision amended, repealed, or superseded. (N.C.S.L. Ch. 2005-117, § 10; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.2. Purpose.**

The purpose hereof is to revise the Charter of the Town of Cary and to consolidate herein certain Acts concerning the property, affairs, and government of the Town. (N.C.S.L. Ch. 2005-117, § 2; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.3. Repealer.**

The following Acts or portions of Acts, having served the purposes for which they were enacted, or having been consolidated into this Charter, are hereby repealed:

N.C.S.L. Ch. 1971-868.  
 N.C.S.L. Ch. 1973-173.  
 N.C.S.L. Ch. 1973-357.  
 N.C.S.L. Ch. 1977-816.  
 N.C.S.L. Ch. 1979-1275.



N.C.S.L. Ch. 1985-51.  
 N.C.S.L. Ch. 1987-801.  
 N.C.S.L. Ch. 1989-279.  
 N.C.S.L. Ch. 1989-511.  
 N.C.S.L. Ch. 1989-874.  
 N.C.S.L. Ch. 1993-27.  
 N.C.S.L. Ch. 1993-137.  
 N.C.S.L. Ch. 1993-325.  
 N.C.S.L. Ch. 2000-108.  
 N.C.S.L. Ch. 2001-191.  
 N.C.S.L. Ch. 2001-245.  
 N.C.S.L. Ch. 2001-286.  
 Section 3 of N.C.S.L. Ch. 2001-485.  
 N.C.S.L. Ch. 2003-74.  
 N.C.S.L. Ch. 2003-380.  
 N.C.S.L. Ch. 2005-41.  
 (N.C.S.L. Ch. 2005-117, § 3; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.4. Acts not repealed.**

The following Acts are not affected by this Charter:

N.C.S.L. Ch. 1979-1275 (removal of areas from the corporate limits).  
 N.C.S.L. Ch. 1993-27 (removal of areas from the corporate limits and addition of areas to the corporate limits).  
 N.C.S.L. Ch. 1998-192 (Swift Creek Management Plan).  
 N.C.S.L. Ch. 2005-89 (enforcement of Swift Creek Management Plan).  
 (N.C.S.L. Ch. 2005-117, § 4; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.5. Prior Acts not revived.**

No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

- (1) The repeal herein of any Act repealing such law; or
  - (2) Any provision of this Charter that disclaims an intention to repeal or affect enumerated or designated laws.
- (N.C.S.L. Ch. 2005-117, § 6; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.6. Existing ordinances, resolutions, rules and regulations.**

All existing ordinances and resolutions of the Town of Cary and all existing rules or regulations of departments or agencies of the Town of Cary not inconsistent with the provisions of this Act shall continue in full force and effect until repealed, modified, or amended.  
 (N.C.S.L. Ch. 2005-117, § 7; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.7. Private rights or interests not effected.**

No provision of this Charter is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this Charter.
- (2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this Charter.  
(N.C.S.L. Ch. 2005-117, § 5; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.8. Pending actions.**

No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this Charter by or against the Town of Cary or any of its departments or agencies shall be abated or otherwise affected by the adoption of this Charter.  
(N.C.S.L. Ch. 2005-117, § 8; Ord. No. 06-001, § 1, 2-9-2006)

**Section 9.9. Severability.**

If any part of this Charter or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Charter which can be given effect without the invalid provision or application, and to this end the provisions of this Charter are declared to be severable.  
(N.C.S.L. Ch. 2005-117, § 9; Ord. No. 06-001, § 1, 2-9-2006)

**CODE COMPARATIVE TABLE**

**ORDINANCES**

This table shows the location of the sections of the basic Charter and any amendments thereto.

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Charter</b>
	12-12-1974(Ord.)	1	3.2
		2	3.3
			3.5
			4.3
	3-27-1975(Ord.)	1	3.2
		2	4.3
	8-28-1975(Ord.)	1	3.2
		2	4.3
00-27	11- 9-2000	1	3.2
		2(a)	4.3
		2(b)	4.6
06-001	2- 9-2006		Char. §§ 1.1—9.9
06-007	4-27-2006		Char. §§ 1.1—9.9
07-17	10-11-2007	1 Added	Char. §§ 8.16—8.18
2010-Code-02	3-10-2010	Added	Char. §§ 8.19—8.20



CARY CODE OF ORDINANCES