

Chapter 20

LICENSES AND BUSINESS REGULATIONS*

Article I. In General

- Sec. 20-1. Licenses or permits; refusal to issue; suspension, revocation; notice, hearing.
- Sec. 20-2. Pawnbrokers.
- Sec. 20-3. Peddlers and solicitors.
- Secs. 20-4—20-24. Reserved.

Article II. Reserved

- Secs. 20-25—20-66. Reserved.

Article III. Taxicabs

Division 1. Generally

- Sec. 20-67. Definitions.
- Sec. 20-68. Compliance with chapter; exception.
- Sec. 20-69. Proof of financial responsibility.
- Sec. 20-70. Records.
- Sec. 20-71. General prohibited practices.
- Sec. 20-72. Rates and charges.
- Sec. 20-73. Enforcement and penalties.
- Sec. 20-74. Defrauding taxicab.
- Secs. 20-75—20-104. Reserved.

Division 2. Permits

- Sec. 20-105. Required.
- Sec. 20-106. Issuance.
- Sec. 20-107. Application.
- Sec. 20-108. Issuance standards and procedures.
- Sec. 20-109. Expiration and renewal.
- Sec. 20-110. Suspension or revocation.
- Secs. 20-111—20-133. Reserved.

***State law references**—Taxation, G.S. Ch. 105; peddlers, itinerant merchants, etc., G.S. 160A-178; regulating and licensing businesses, trades, etc., G.S. 160A-194.

CARY CODE OF ORDINANCES

Division 3. Vehicles and Equipment

- Sec. 20-134. Vehicle inspection.
- Sec. 20-135. Taximeter.
- Sec. 20-136. Identifying markings required.
- Secs. 20-137—20-149. Reserved.

Article IV. Towing from Private Parking Lots

- Sec. 20-150. Purpose and intent.
- Sec. 20-151. Applicability.
- Sec. 20-152. Definitions.
- Sec. 20-153. Notice required.
- Sec. 20-154. Report to police department required.
- Sec. 20-155. Response time; towing receipt required; methods of payment.
- Sec. 20-156. Release prior to tow; retrieval of personal property.
- Sec. 20-157. Regulations for tow storage lots.
- Sec. 20-158. Violations; responsible party.
- Sec. 20-159. Penalties.
- Secs. 20-160—20-169. Reserved.

Article V. Business Improvement District

- Sec. 20-170. BID fee mitigation.

ARTICLE I. IN GENERAL

Sec. 20-1. Licenses or permits; refusal to issue; suspension, revocation; notice, hearing.

(a) The town may refuse to issue a license or permit, or the licenses or permits issued pursuant to this Code, unless otherwise provided hereunder, may be suspended or revoked by the town manager or other authorized official, department, board or agency where applicable, after notice and hearing for any of the following causes:

- (1) Any fraud, misrepresentations or false statements contained in the application for permit or license;
- (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, merchandise and services;
- (3) Any violation of this Code and/or any ordinance of the town;
- (4) Conviction of the applicant, licensee or permittee of any crime or misdemeanor involving moral turpitude or a violation of any act of this state, or any law of the United States having a reasonable relationship to the purpose and scope of the permit or license;
- (5) Conducting the activity under this Code and/or any ordinance of the town in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, morals or general welfare of the public.

(b) Notice of hearing for the suspension or revocation of a license or permit shall be in writing given by the town clerk, setting forth specifically the grounds of the complaint and the time and place of the hearing. Service of such notice shall be made either by personal service or by certified mail, return receipt requested, to the applicant, licensee or permittee at the last known address, at least five days prior to the date set for the hearing.

(c) In case of refusal to issue a permit or license or the suspension or revocation of a license or permit as herein provided, no portion of the application, license or permit fee shall be returned to the applicant, licensee or permittee unless otherwise provided in this Code and/or any ordinance of the town.

(d) Any suspension or revocation hereunder shall not be considered a recovery or penalty so as to bar any other penalty from being enforced.

(e) The order of the town manager or other authorized official, department, board or agency where applicable, shall be the final municipal action for the purpose of judicial review.
(Code 1976, § 1-12; Code 1982, § 11-4)

Sec. 20-2. Pawnbrokers.

The provisions of G.S. ch. 66, art. 45, part 1 are hereby adopted.
(Code 1982, § 11-5; Ord. No. 89-69, § 1, 9-14-1989; Ord. No. 2013-Code-02, 6-13-2013)
State law reference—Authority to adopt G.S. 66-397.

Sec. 20-3. Peddlers and solicitors.

(a) *Intent.* The purpose of this section is to regulate the door-to-door offering for sale and selling of goods, wares, merchandise, food, periodicals and services and the solicitation of orders therefor in residential areas of the town, and to thereby promote the public safety and welfare.

(b) *Permit required.* It is unlawful for any person, firm or corporation to sell, offer for sale, or solicit orders for goods, wares, merchandise, food, periodicals or services by going from door-to-door ("peddle" or "solicit") within the town without having first secured a peddler/solicitor's permit from the town as provided for in this section, unless it is done with the prior request or invitation of the residents or occupants of the premises visited. Additionally, it is unlawful to peddle or solicit unless the following requirements are met:

- (1) Such peddling/soliciting shall be permitted only between the hours of 9:00 a.m. and 6:00 p.m. during eastern daylight time and 9:00 a.m. to 5:00 p.m. during eastern standard time.
- (2) The peddler/solicitor permit issued for that person shall be carried and displayed at all times while conducting such solicitations in such a manner as to be clearly visible to a reasonable person of adequate vision.
- (3) All other permits or licenses required by law shall have been obtained.

(c) *Permit applications.* Applications for peddler/solicitor permits under this section shall be submitted to the police department during normal business hours (Monday through Friday, 9:00 a.m. to 5:00 p.m. eastern time) on a form provided by the police department, under oath, and shall include, but not be limited to, the following information:

- (1) The full name of the applicant;
- (2) The permanent residence address of the applicant;
- (3) The applicant's temporary address in or in the vicinity of the town, if applicable;
- (4) The name and address of the applicant's employer or the organization with which the applicant is associated in connection with the sale activity or solicitation of orders;
- (5) The type(s) of goods, wares, merchandise, food, periodicals and services to be sold or offered for sale;
- (6) The period for which the application is sought, which shall not exceed 60 consecutive calendar days; provided that the permit may be renewed for sixty-day periods without limit, upon proper application therefor;
- (7) A record of any and all crimes of which the applicant has been convicted or has pleaded no contest in the ten years preceding the submittal of the application;
- (8) The age, height, weight, and any other additional information which the town may reasonably require for identification, including a copy of the document(s) used by the applicant to verify personal identification (e.g., driver's license, passport, picture I.D.);

- (9) A complete listing of and information concerning all other permits or licenses which were obtained by the applicant;
- (10) If an application is filed by an employer, there shall also be filed separate applications for each peddler/solicitor giving the information set forth above for each peddler/solicitor and signed and sworn to by each peddler/solicitor, and a separate permit shall be issued for each applicant.

(d) *Procedures for considering applications.*

- (1) Upon receipt of a complete application, the police chief or designee (hereafter "police chief") shall make or cause to be made such investigation as reasonably necessary to verify the information in the application and to assure compliance with the provisions of this section and shall issue a permit unless the applicant:
 - a. Has not submitted a completed application;
 - b. Is not permitted by law to engage in such activity due to age;
 - c. Has been convicted of, or has pleaded no contest to, a felony charge within the ten years preceding the submittal of the application;
 - d. Has been, within the previous five years, convicted of, or pleaded no contest to, a misdemeanor charge involving theft, fraud, forging, uttering, or other crimes of like nature or any crime involving moral turpitude;
 - e. Does not have valid driving privileges in the state in those cases where the applicant will be operating a vehicle in the course and scope of the peddling/soliciting; or
 - f. Has not obtained the necessary licenses.
- (2) The police chief shall approve or deny an application and issue a permit as soon as possible and, except in the case of extraordinary circumstances, as when a number of applications are submitted within a short period of time, should act within 72 hours of receipt of the completed application. Such issued permit shall be nontransferable.

(e) *Permit renewal.* A peddler/solicitor permit may be renewed for an unlimited number of sixty-day periods, provided an application for renewal is made on such form as provided by the police chief no later than the expiration date on the current valid permit. Applications received after that date shall be processed as new applications. The police chief shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this section. If the police department finds that the application meets the above requirements, the renewal permit shall be issued.

(f) *Appeals.* The appeal of a refusal to issue a permit or the revocation of a permit shall be made to the town manager by filing a written notice of appeal, specifying with particularity the grounds upon which the appeal is made, no later than ten days from the date of the refusal to issue a permit or the revocation of a permit. The town manager or designee ("town manager") shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties, and shall render a decision within a reasonable time. As provided in section 20-1(e), the order or decision of the town manager shall be final municipal action.

(g) *Revocation of permit.* Permits issued under this section may be revoked in accordance with section 20-1. Additional grounds for revocation of a permit include, where evidence is presented, that the applicant has been arrested for a felony or a misdemeanor involving theft, fraud, forgery, moral

turpitude, criminal trespass, or a threat to the public safety during the peddling/solicitation period, or has otherwise violated the provisions of this section. A permit which has been revoked shall be immediately surrendered to the police department. Appeals of revocations may be made pursuant to the same process as for denied permits.

(h) *Exemptions.* This section shall not apply to:

- (1) The delivery of goods or services which have been ordered before delivery;
- (2) The circulation of petitions for signature or lawful distribution of advertising materials, flyers, or materials expressing views on political, social or religious matters;
- (3) The lawful promotion or expression of views concerning political, social, religious and other like matters;
- (4) The sale or offering for sale of goods, wares, merchandise, food, periodicals or services by bona fide members or representatives of charitable, religious, civic, or fraternal organizations who receive no compensation of any kind for their services, and such sale or offering by children under the age of 18 years who are students in a public or private school for school activities;
- (5) The solicitation of contributions or pledges thereof for bona fide nonprofit organizations;
- (6) The sale or delivery of goods to business establishments;
- (7) The sale or soliciting of orders for the sale of milk, dairy products, vegetables, poultry, eggs, and other farm and garden produce so far as the sale of such commodities named herein is now authorized by law.

(i) *Peddling/soliciting from rights-of-way.* Peddling or soliciting from rights-of-way is prohibited in accordance with G.S. 20-175 except that the distribution of newspapers on the non-traveled portions of a street is allowed, provided that the distribution does not impede the normal movement of traffic.

(j) *Penalty.* Peddling or soliciting without a permit or otherwise in violation of any of the provisions of this section, including failing to surrender a revoked permit, shall constitute a criminal misdemeanor.

(Code 1976, § 5-4; Code 1982, § 11-3; Ord. No. 79-5, § 1, 5-31-1979; Ord. No. 96-003, § 1, 3-14-1996; Ord. No. 96-004, § 1, 4-11-1996; Ord. No. 02-001, § I, 1-10-2002; Ord. No. 2010-Code-02, 3-10-2010; Ord. No. 2015-Code-002, 6-25-2015; Ord. No. 2022-Code-04, 9-22-2022)

State law references—Peddling or soliciting from right-of-way, G.S. 20-175; regulation of solicitation campaigns, flea markets and itinerant merchants, G.S. 160A-178.

Secs. 20-4—20-24. Reserved.

ARTICLE II. RESERVED

Secs. 20-25— 20-66. Reserved.

ARTICLE III. TAXICABS*

DIVISION 1. GENERALLY

Sec. 20-67. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief means the chief of police of the town of Cary and his or her designee(s). The chief is responsible for the administration of this article.

Driver means any person who actually drives a taxicab on the streets of the town for hire. The term "drive" or "driving a taxicab" means driving a taxicab for hire on such streets.

Driver's permit means the license, issued by the chief, under which a person may drive a taxicab for hire.

Limousine means for hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways.

Memorandum operating permit means the card issued by the chief to a taxicab operator for display within a taxicab indicating that an operating permit has been issued covering the operation of such taxicab.

Operating permit means the license issued by the chief under which a person may operate a taxicab, and which shows that proof of financial responsibility and other requirements of this article have been met and that the convenience and necessity of the public requires the operation of such taxicab(s).

Operator means any person who owns one or more taxicabs or who engages in the operation of one or more taxicabs under a trade or service name.

Owner means the owner of a taxicab and any person holding legal right to possession or management of one or more vehicles being operated as a taxicab.

Permit means an operating permit and a driver's permit, as the context requires.

Person means and includes an individual, partnership, corporation, limited liability company, and all other legal entities including an association of taxicab owners/drivers.

Proof of financial responsibility means a certificate of any insurance carrier duly authorized to do business in the state of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab, his or her agents and employees while in the performance of their duties, against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation, including driving, of such taxicab or taxicabs in the limits required by state law (G.S. 20-280(b)), as amended from time to time. For purposes of this definition, the term "operator" shall mean and include any driver of the taxicab.

***State law references**—Municipal regulation of taxicabs and drivers, G.S. §§ 20-37, 160A-304; registration of taxicabs by state, G.S. § 20-87; financial responsibility, G.S. § 20-280.

Rate card means a card for the display of the rates or fares for the use of the taxicab.

Taxicab means a passenger motor vehicle plying for hire for which public patronage is accepted or solicited and which is so designed as to seat comfortably not more than nine persons but shall not include motor vehicles or motor vehicle carriers as defined in G.S. ch. 20, art. 17.

Taximeter means a mechanical device which is installed in a taxicab for the purpose of computing the fare for a trip upon the basis of distance traveled, waiting time, or both.
(Code 1982, § 18-1; Ord. No. 98-022, 12-10-1998; Ord. No. 2015-Code-002, 6-25-2015)

Sec. 20-68. Compliance with chapter; exception.

It is unlawful for any person to engage in the business of operating one or more taxicabs, or to drive any taxicab, within the corporate limits of the town or within one mile beyond the corporate limits in every direction, unless such person shall have complied, and shall continue to comply, with the provisions of this chapter. Notwithstanding the preceding, taxicab drivers and operators who are duly licensed in another jurisdiction may come into the town to pick up or deliver persons if their services were requested by the passenger, provided they do not solicit fares within town limits. The term "solicit fares" shall include directing advertisement of their services toward town residents, such as advertising in the town phone directory.
(Code 1982, § 18-2; Ord. No. 98-022, 12-10-1998)

Sec. 20-69. Proof of financial responsibility.

The operator and driver of every taxicab shall furnish and keep in effect for each taxicab proof of financial responsibility. The insurance policy shall contain a clause obligating the insurance company to give 15 days' written notice to the chief prior to the cancellation of such insurance on any taxicab. The operating permit for any taxicab shall be automatically revoked upon the lapse, cancellation or termination of the insurance on that vehicle unless the same has been renewed or replaced and a new certificate filed with the chief.
(Code 1982, § 18-3; Ord. No. 98-022, 12-10-1998; Ord. No. 2015-Code-002, 6-25-2015)

Sec. 20-70. Records.

Every operator and driver shall keep a daily record of all calls received from persons requesting transportation. Every driver shall keep a record of his or her trips, including origin, destination, fare charged, time the driver received the passenger, the time the driver completed the trip, and the fare received. Such information shall be recorded on the driver's trip sheet immediately upon the completion of each trip. Such record shall be open to inspection at all times by the police department, and the trip sheets shall be filed chronologically by car and date at the central taxicab office of the operator within 96 hours from first day of use and shall remain on file at such location for a period of three months. Every taxicab driver after receiving a call from the dispatcher to pick up a passenger shall notify the dispatcher immediately after picking up the passenger of the time such passenger was picked up.
(Code 1982, § 18-3.1; Ord. No. 98-022, 12-10-1998)

Sec. 20-71. General prohibited practices.

(a) *Prohibited practices.* In addition to the practices prohibited elsewhere in this chapter, it shall be unlawful:

- (1) *Refusal to transport passengers.* For a driver to refuse to transport any orderly person applying to driver for transportation within the limits of the town when the taxicab has not been previously engaged by another.
- (2) *Passenger seating.* For a driver to transport in a taxicab more than the number of passengers specified as its capacity by the manufacturer at the same time, or to transport a child under the age of three years unless the child is in an approved child safety seat.
- (3) *Illegal use of a cab.* For a driver, on or off duty, to knowingly permit a taxicab to be used for any illegal act listed in G.S. Ch. 14, arts. 26 and 27 (being G.S. 14-177 through 14-202 and 14-203 through 14-208) or to transport any person in a taxicab to any place used for such purposes, or to acquire and transport in a taxicab any alcoholic beverage for another, or to transport any person to any place where alcoholic beverages are illegally dispensed or stored.
- (4) *Lost property.* For a driver to fail, refuse or neglect to preserve any property left in a taxicab by any passenger and to deliver it to the operator, who shall report the same to the police department within 24 hours thereafter.
- (5) *Deviating from direct route.* For a driver to fail, refuse or neglect to proceed with all reasonable dispatch by the nearest practicable route to the destination of the first person applying to him for transportation unless the person has granted permission to take on or wait for additional passengers.
- (6) *Solicitation.* For any person to solicit passengers for a taxicab except the driver thereof when sitting upon the driver's seat of the vehicle.
- (7) *Illegal rates.* For a driver to charge or attempt to charge a passenger a greater or lesser rate of fare than that which is posted in the vehicle as required by this chapter.

(b) *Suspension/revocation of permit for violation.* Upon any violation of the provisions of this section, the driver's permit of the violator may be suspended or revoked in accordance with the procedures provided in section 20-110.

(Code 1982, § 18-3.2; Ord. No. 98-022, 12-10-1998; Ord. No. 2010-Code-02, 3-10-2010)

Sec. 20-72. Rates and charges.

(a) No person operating or driving a taxicab may charge for the use of a taxicab within the town in an amount greater than in accordance with the following rates:

- (1) Mileage: Two dollars and thirty cents for the first one-sixth mile or fraction thereof and 30 cents for each additional one-sixth mile or fraction thereafter. At this rate, the charge for the first mile may be four dollars and ten cents and the charge for each additional full mile may be one dollar and eight cents.
- (2) Waiting time: Twenty-five cents for each sixty-second period, or fraction thereof, of waiting time.
- (3) Foot lockers: Fifty cents each.
- (4) Trunks: One dollar for each trunk, except where two persons are required to handle, in which case the charge shall be one dollar and fifty cents for each trunk.
- (5) Hand baggage: Ten cents for each piece of hand luggage in excess of one per person.

- (6) Groceries in bags: Ten cents for each bag or sack in excess of one bag per person.
- (7) Groceries in cartons, boxes or crates: Ten cents for each container.
- (8) Bulky items: Fifty cents for each article, container or commodity (such as, but not limited to, bags, cartons, boxes or crates of groceries, coal, feed, fertilizer, rolls of roofing paper and the like) weighing more than 50 pounds.

(b) A sign setting forth these maximum rates shall be posted inside the taxicab at a conspicuous place where it will be visible to passengers. The driver of the taxicab shall not reset the taximeter until the fair is paid.

(Code 1982, § 18-3.3; Ord. No. 98-022, 12-10-1998; Ord. No. 01-007, § 1, 5-10-2001)

Sec. 20-73. Enforcement and penalties.

(a) *Civil penalty.* In addition to all other remedies and sanctions available to the town or imposed under law, there is hereby imposed a civil penalty in the amount of \$50.00 for the first violation of any provision of this chapter in any 12-month period and \$100.00 for any subsequent violation in a 12-month period.

- (1) The levying of civil penalties may be initiated by any police officer giving written notice of the violation along with a statement that a civil penalty is being imposed. The notice shall inform the recipient that he or she may appeal the civil penalty within ten days to the chief. If an appeal is made, a hearing shall be held before the chief, who, following the hearing, shall affirm or reverse the imposition of the penalty. A notice of violation that is not appealed, or one affirmed after appeal, shall be considered finally assessed.
- (2) For the second and successive violations of any of the provisions of this chapter during any 12-month period, the civil penalty shall be double that for the first violation.
- (3) Civil penalties shall be paid within 30 days to the office of the revenue collector of the town. If not so paid, the town may initiate a civil action in the name of the town in the nature of debt to collect any unpaid penalty.
- (4) Any permit required to be issued or renewed under this chapter shall not be issued or renewed unless and until all civil penalties that have been assessed against the applicant, or any employee of the applicant, have been paid in full.

(b) *Misdemeanor offenses.* In addition to the civil penalty, violations may also be punishable as a misdemeanor offense.

(Code 1982, § 18-3.4; Ord. No. 98-022, 12-10-1998)

State law reference—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 20-74. Defrauding Taxicab.

No person who engages, uses, employs or hires a taxicab shall fail or refuse to pay the required rate or fare with intent to cheat and defraud the taxicab owner or driver. Violation of this section shall be a misdemeanor. This section not only applies to intra-city trips, but also to legally licensed taxicabs from other jurisdictions that enter the town to reach a destination, where the failure or refusal to pay occurs within the town.

(Ord. No. 2011-Code-02, 3-10-2011)

Secs. 20-75—20-104. Reserved.

DIVISION 2. PERMITS

Sec. 20-105. Required.

(a) *Operating permit.* No person shall operate, or permit to be operated or driven, any taxicab without first having obtained, and having in effect, an operating permit authorizing the operation of each vehicle engaged as such. Upon issuance of an operating permit, the chief shall also issue a memorandum operating permit. All taxicabs shall at all times display the memorandum operating permit covering such taxicab.

- (1) *Limitation on number of operating permits.* The town council may, by resolution, limit the total number of operating permits issued. At the time of adoption of this chapter, the total number is 30. The chief may make recommendations for changes in the number of available operating permits.
- (2) *Transferability.* Operating permits are not transferable from one vehicle to another, nor are they transferable between persons.
- (3) *Review of drivers.* The operating permit holder shall review the qualifications of all drivers seeking to drive the taxicab under the operating permit. No operating permit holder shall permit or allow any driver to drive a taxicab under his or her operating permit unless, after reasonable inquiry, it appears that the driver has a valid state and Town of Cary taxicab driver's permit, and has met all the requirements of this chapter for taxicab drivers.
- (4) *Required phone service.* Every operating permit holder shall advertise in the local telephone book making the public aware of the services provided by the operator and shall operate and maintain a business location capable of dispatching and receiving local telephone calls for service from town citizens.

(b) *Driver's permit.* No person shall drive a taxicab unless that person shall have been issued, and shall have in effect, a driver's permit under this chapter. An identification card containing the name and photograph of the permit holder and the permit number shall be issued by the chief as evidence of the driver's permit. Such identification card shall also bear the name of the chief and the following words in bold type or print:

PASSENGERS—FOR YOUR PROTECTION, KEEP A RECORD OF YOUR DRIVER'S NAME AND NUMBER.

(c) *Display of identification.* Such identification shall be on display in such a manner as to be in full view of all passengers at all times while the driver is on duty. The driver shall retain custody of the identification card, and present it, on demand, for inspection by any passenger or law enforcement officer.

(Code 1982, § 18-4; Ord. No. 98-022, 12-10-1998)

Sec. 20-106. Issuance.

(a) *Issuance/compliance with chapter.* The chief shall take applications for, and issue, permits. No permit shall be issued to, or renewed by, any person who has not complied with all the applicable requirements of this chapter and paid in full all civil penalties that may have been finally assessed hereunder. The fee for all driver's permits is \$15.00.

(b) *False information.* Submission of false or misleading information to obtain or renew a permit or in submitting reports under this chapter is unlawful, shall be a misdemeanor, and shall be grounds for denial, suspension or revocation of a permit.

(c) *Right to investigate.* Submission of an application for a permit shall constitute a waiver of any privileges and rights of privacy with respect to any document in existence reasonably related to the determination of the applicant's qualifications and shall serve as an authorization to the chief to make inquiry of any person or entity, and to receive any oral or written reports from any person or entity, regarding any facts, evidence or information reasonably related to the determination of the applicant's qualifications. The applicant shall sign any separate written authorization that any person may require to release documents or information concerning the applicant.

(d) *Town property.* All permits and memorandums of permit shall be and remain the property of the town. Loss, theft, destruction or defacement shall be immediately reported to the chief and a replacement permit obtained.

(Code 1982, § 18-5; Ord. No. 98-022, 12-10-1998)

Sec. 20-107. Application.

(a) *Operating permit.* All applications for an operating permit shall be submitted by the owner. The applicant shall file with the chief a sworn application, in duplicate, on forms provided by the chief. If the applicant desires an operating permit for more than one taxicab, such application may be made on one form and shall provide supporting information for each taxicab for which an operating permit is desired. If the applicant is a corporation, then the information requested about the applicant shall also be provided about each officer, director and about each stockholder owning 20 percent or more of the outstanding stock. If the applicant is a limited liability company, such information shall be provided about its managers and each of its members. If the operator is a partnership, such information shall be provided about each of its partners. The application must contain the following information:

- (1) Information reasonably necessary to identify the applicant. If the applicant is a corporation or a limited liability company, the application shall include a certified copy of the articles of incorporation or organization, as the case may be.
- (2) Description of the experience of the applicant in the transportation of passengers for hire.
- (3) Description of any unpaid or unbonded judgments of record against the applicant, including the title of all actions, the amount of each judgment and judgment docket reference information.
- (4) Court records of the applicant and of any person who functions as a general manager. Fingerprints of the applicant shall be submitted so a fingerprint check can be made.
- (5) An accurate and complete description of the proposed or actual taxicab operation and any other information necessary in order for the chief to evaluate the applicant's ability to provide and maintain taxicab service as required under this chapter.
- (6) Information concerning each taxicab for which an operating permit is sought, as follows:
 - a. Full name, address and phone number of the taxicab owner;
 - b. Full description of the vehicle, including make, type, year of manufacture, state license number, engine and serial number, cab number, color scheme, lettering and marks, and its seating capacity exclusive of the driver;

- c. Proof of financial responsibility for each taxicab;
- d. Description of all liens, mortgages, and other encumbrances on the taxicab, and lienholder, amount and character thereof;
- e. Such other information, evidence and documents, as the chief may require to assure that the requirements of this chapter have been or will be met.

(b) *Driver's permit.* All applicants for a driver's permit shall file with the chief a sworn application, in duplicate, on forms provided by the chief which shall require submission of such information as may be needed by the chief to conduct a background investigation on the applicant. By submitting an application for a driver's permit, applicants agree that they accept the town's taxicab driver's dress code. Applicants agree to be clean and neat in appearance and not wear flip-flops or sandals, tank or T shirts, or shorts while on duty as a taxicab driver. All applications shall provide the following information:

- (1) Applicant's full name, age, date of birth, place of birth, business and home address and phone numbers, state driver's license number and a physical description, including height, weight, sex, race, color of eyes and hair, complexion, and body and facial marks, if any;
- (2) The length of time the applicant has resided in the town and in the state, and citizenship information;
- (3) A current health certificate issued by the health department, or by a licensed physician, within the previous 12 months stating that the applicant has no impairments that would endanger the life of any passenger riding in the taxicab;
- (4) Applicant's employment history for the previous ten years and previous experience driving taxicabs and other vehicles for hire;
- (5) Applicant's court and driving records;
- (6) Two copies of a photograph taken within the previous six months and a completed fingerprint card;
- (7) A letter of introduction from the operator who proposes to hire the driver, if any, and affidavits of good character from two reputable citizens who have personal knowledge of the applicant.

(Code 1982, § 18-6; Ord. No. 98-022, 12-10-1998; Ord. No. 2015-Code-002, 6-25-2015)

Sec. 20-108. Issuance standards and procedures.

(a) *Investigation.* The chief shall cause an investigation to be made of the applicant. No permit shall be issued or renewed unless the applicant meets the requirements of this chapter including the following:

- (1) Is at least 18 years of age or is otherwise legally emancipated and is a U.S. citizen or possesses documentation of eligibility to work in the United States;
- (2) Has neither entered a plea of guilty or no contest to nor has been convicted of or had an order entered continuing prayer for judgment to any of the following:

- a. Any felony against the state or any offense against another state which would have been a felony if committed in North Carolina;
 - b. Any federal or state law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
 - c. Any federal or state law relating to prostitution;
- (3) Is not a habitual user of, or addicted to, narcotic or barbiturate drugs or intoxicating liquors;
- (4) Has no unpaid and unbonded judgments of record against the applicant; or, if such exist, demonstrates the establishment and maintenance of regular periodic payments in discharge of the liability;
- (5) Provides proof of financial responsibility;
- (6) Has not had any permit issued under this chapter revoked within the 24 months preceding the application;
- (7) Has paid in full any civil penalties finally assessed under this chapter;
- (8) Must also, if an applicant for an operating permit:
 - a. Not be in default in the payment of any indebtedness secured by lien, mortgage or any other encumbrance on the vehicle intended to be operated pursuant to the operating permit;
 - b. Have properly registered the vehicle to be operated with the state, and secured required state inspections and inspections in accordance with the requirements of this chapter;
- (9) Must also, if an applicant for a driver's permit:
 - a. Be physically and mentally capable of safely driving a taxicab;
 - b. Possess a valid state driver's license issued to him or her;
 - c. Have an operating permit or permission from an operating permit holder to operate a taxicab under the operating permit;
 - d. Have not habitually violated traffic laws or ordinances. Habitual violation shall be deemed to mean more than two violations in any 12-month period of time;
 - e. Have not, within the previous 12 months, had a revocation or suspension of 60 days or more of his or her driver's license for convictions of moving violations; or, within the previous 24 months, been convicted of, or entered a plea of guilty or no contest to, driving under the influence of alcohol or drugs, or a substantially equivalent offense; or has not accumulated, within the three-year period preceding the application, 12 or more points under G.S. 20-16, or six or more points within the three-year period following the reinstatement of a state driver's license which had been suspended or revoked.

(b) *Appeal.* In the event the chief, or designee, denies issuance of a permit, such person shall specify, in writing, the grounds for such denial. The applicant shall have a period of ten days from receipt of notification of the denial and grounds therefor within which to appeal the denial to the chief or the town manager, pursuant to the procedures specified in section 20-110.
(Code 1982, § 18-7; Ord. No. 98-022, 12-10-1998)

Sec. 20-109. Expiration and renewal.

(a) Permits shall expire 12 months from the date of issue. Applications for renewal of permits shall be made at least 30 days prior to the date of expiration of the existing permit in the same manner as the application for an original permit, on such forms as may be required by the chief.

(b) The chief may refuse to renew an operating permit if the taxicab for which the permit was issued has not been in regular use and service in the town in the three months preceding the application for renewal. The purpose of this provision is to assure that the full allocation of operating permits are allocated to taxicabs that are actually used in service in the town.
(Code 1982, § 18-8; Ord. No. 98-022, 12-10-1998)

Sec. 20-110. Suspension or revocation.

(a) *Grounds.* In addition to any other penalty provided for, the chief shall have the right to suspend or revoke any permit if the applicant or permittee:

- (1) Fails to operate the taxicab or taxicab business or to drive the taxicab in compliance with the requirements of this chapter, or fails to continuously meet the standards set forth in section 20-108;
- (2) Fails to continuously maintain proof of financial responsibility;
- (3) Submits or causes to be submitted false or misleading information on any application or report required under this chapter.

(b) *Procedure.* When grounds for suspension or revocation exist, the chief shall, by registered or certified letter, give notice to the permittee that the permit is suspended or revoked and must be immediately surrendered. It shall be unlawful for the person to whom the permit was issued to fail to return same to the chief. The permittee shall have ten days from the receipt of such notice to appeal the determination to the chief, if the initial determination was made by a designee of the chief, and to the town manager if the initial determination was made by the chief himself, by filing a written notice of appeal with the person who made the initial determination and the chief or the town manager, as the case may be. Such notice of appeal shall specify with particularity all the grounds for the appeal. The permit shall remain suspended or revoked pending such appeal. If no notice of appeal is filed within the allotted time, any right to an appeal is considered waived at the expiration of the ten-day period. If an appeal is filed and a hearing held and the suspension or revocation is confirmed by the chief, the permittee shall have ten days from receipt of the determination to appeal to the town manager by filing a written notice of appeal with the chief and the town manager. If an appeal was filed and a hearing held and the suspension or revocation was confirmed by the town manager, then the holder may not reapply for a taxicab permit for a minimum of 12 months.
(Code 1982, § 18-9; Ord. No. 98-022, 12-10-1998; Ord. No. 2019-Code-03, 9-26-2019)

Secs. 20-111—20-133. Reserved.

DIVISION 3. VEHICLES AND EQUIPMENT

Sec. 20-134. Vehicle inspection.

(a) *Upon application for permit and periodically.* In addition to annual state safety inspections, vehicles must be inspected under this chapter upon the filing of an application, or renewal application, for an operating permit. The chief may also, from time to time, cause to be made an inspection of taxicabs. If any vehicle is found to be unsafe or unfit for operation, notice shall be given to the driver and the operating permit holder and such vehicle shall not be operated until the same has been put in safe and fit condition.

(b) *Inspection items.* The inspection may include and cover the brakes, lights, horn, tires, all other safety features of the vehicle, a road test of the vehicle, an inspection and test of the taximeter, and an inspection of the interior of the taxicab with respect to the general condition of the upholstery, rugs, or floor covering and general cleanliness thereof and an inspection of the exterior condition of the vehicle which must be free of torn, flaking or protruding metal which could constitute a safety hazard. Additionally, the following, in good working order, is required on every taxicab:

- (1) An electric light indicator on top of the vehicle no less than ten inches in width and four inches in depth and height designed so that when the taximeter is engaged the light is burning;
- (2) A standard speedometer, visible to passengers, properly installed and maintained in good working order. No taxicab shall be operated as a taxicab if such speedometer is out of repair or disconnected;
- (3) A heater and air conditioner sufficient to adequately heat and cool the interior of the taxicab in cold or warm weather, respectively;
- (4) A frame or other device to display the driver's permit, memorandum operating permit and rate card to passengers;
- (5) Taximeter as required by section 20-135. No taxicab shall be driven as a taxicab if the taximeter is out of repair or disconnected;
- (6) Approved and working seat belts available to any passenger within the taxicab;
- (7) Windshields, side and rear glass clear and free of dirt, discoloration and cracks;
- (8) A two-way radio or cellular phone providing direct communication for immediate dispatching;
- (9) Tires with a tread of at least three-thirty-seconds of an inch;
- (10) Removable floor mats of rubber or other nonabsorbent material;
- (11) Neat and sanitary interior with upholstery that is free of stains and tears and of original manufacturer's design and type with no temporary seat covers;
- (12) Such other items as may be required by this chapter.

(c) *Inspection decal.* The chief may require that taxicabs that have been inspected and found to be in clean and proper condition display an inspection decal issued by the chief and displayed in

a location to be determined by the chief. At such time as the chief commences issuing inspection decals, no taxicab shall be operated on the streets of the town without displaying a current valid inspection decal.

(d) *Removal from service.* The discovery of any inadequacy in any of the items required to be inspected or tested by this chapter shall cause the taxicab to be removed from service until the taxicab has been repaired and complies with the requirements of this chapter. Such removal may be appealed to the chief in accordance with section 20-110 but the vehicle shall remain out of service pending the decision of the chief.

(Code 1982, § 18-10; Ord. No. 98-022, 12-10-1998)

Sec. 20-135. Taximeter.

(a) No person may operate or drive a taxicab unless the taxi is equipped with a taximeter of a design approved by the chief. In order to be approved, a taximeter must show, in figures which are plainly visible to a passenger, the amount of the fare.

(b) No taxicab shall be driven while occupied by a person other than the driver with the signal affixed to such taximeter in such a position as to denote such vehicle is not employed or in such a position as to denote that it is employed at a rate of fare different from that which is required by this chapter.

(c) No person shall operate or drive a taxicab if the seal is broken on the taximeter, or after the installation of a new or different taximeter, or after any repairs or alterations are made to the taximeter or to the taxicab, if the repairs or alterations to the taxicab will affect the operation of the taximeter in any manner, until the taximeter has been submitted to a taximeter repair mechanic designated by the chief for inspection and test for accuracy. The taximeter repair mechanic shall cause a seal to be affixed to all taximeters that pass inspections.

(d) No person shall use or permit to be used upon any taxicab a taximeter which shall be in such condition as to be more than five percent from absolute accuracy.

(Code 1982, § 18-11; Ord. No. 98-022, 12-10-1998)

Sec. 20-136. Identifying markings required.

(a) *Identification scheme.* Each operator shall adopt a color scheme or other identifying markings for identifying its taxicabs distinct from that of any other operator or firm and shall file such identification scheme with the chief. All additional, new or replacement vehicles put in operation by such operator shall comply with the identification scheme selected. No identification scheme shall be used unless filed with and approved by the chief, and no identification scheme shall be accepted by the chief if it in any way would be confused with the identification scheme of another operator, association or firm.

(b) *Display of name/number/rate.* The operator or operator's trade name, taxicab number and telephone number shall be painted with permanent paint or appear on a permanent decal on both sides and rear of each taxicab, with letters and numbers four inches high or greater. The taxicab number on the rear shall be at a location designated by the chief. There shall be painted on each side of the taxicab in letters and numbers at least three inches high the basic mileage rates. The color to be used for lettering and numbers shall be of sharp contrast to color or surface paint to which applied, so as to be easily visible at a reasonable distance, especially at nighttime with street lights. No lettering or numbers shall be acceptable which have been painted upon a sheet of metal or other material which, in turn, can be removed or detached to conceal the identification of the operator or taxicab number.

(Code 1982, § 18-12; Ord. No. 98-022, 12-10-1998)

Secs. 20-137—20-149. Reserved.

ARTICLE IV. TOWING FROM PRIVATE PARKING LOTS

Sec. 20-150. Purpose and intent.

(a) The town council of the Town of Cary has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.

(b) G.S. 160A-174 allows a municipality by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the municipality.

(c) Some practices related to the non-consensual towing of motor vehicles from parking lots located on private property have exposed the public or members of the towing industry to harm. Non-consensual towing can leave unknowing drivers without means of transportation and can lead to altercations between vehicle owners and towing personnel.

(d) The Cary Town Council desires to minimize and control the harmful and adverse effects resulting from the non-consensual towing of motor vehicles from parking lots located on private property, while also protecting lot owners' and lessees' property rights by ensuring that parking is available to those lawfully present on the property.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-151. Applicability.

(a) The provisions of this article apply to any private property used for residential or non-residential purposes, upon which a private parking lot is located.

(b) Notwithstanding the foregoing, this article does not apply to the towing, removal, or immobilization of a motor vehicle (i) if the motor vehicle obstructs adequate ingress and egress to, from, or within a private parking lot; (ii) if the motor vehicle has been abandoned on private property without the consent of the private property; or (iii) if the motor vehicle is being removed pursuant to the direction of a law enforcement officer or otherwise in accordance with the provisions of this Code or state law.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-152. Definitions.

(a) "Motor vehicle" shall have the definition provided in G.S. 20-4.01.

(b) "Private parking lot" means a lot, garage, or other parking facility not owned or leased by the Town or another governmental entity.

(c) "Towing or storage service" means any person or other entity, whether licensed or not, that engages in or who owns or operates a business which engages, in whole or in part, in the towing or removal of motor vehicles for compensation.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-153. Notice required.

(a) No motor vehicle may be towed from a private parking lot unless such towing meets the requirements of G.S. 20-219.2 and:

- (1) One or more signs meeting at least one of the following requirements is posted as follows:

- a. a sign prominently placed at each entrance allowing vehicular access to the private parking ("Entrance Sign"); or
 - b. if there are no curb or access barriers, at least one sign posted for every 50 feet of the frontage of the private parking lot to a public street ("Frontage Sign"); or
 - c. a sign posted at each parking space from which an unauthorized motor vehicle could be towed, removed, or immobilized ("Parking Space Sign").
- (2) The posted sign(s) complies with the following.
 - a. Entrance or Frontage Signs shall be at least 24 inches by 24 inches in size, and shall not exceed six square feet.
 - b. Parking Space Signs shall be at least 12 inches by 18 inches in size, and shall not exceed six square feet.
 - c. All signs required by this Ordinance shall be permanently installed with the bottom of the sign not less than four feet above ground level, and not more than five feet above ground level. Pedestrian safety shall be taken into consideration when locating freestanding signs.
- (3) The sign(s) required by this Ordinance shall clearly display the following:
 - a. The words "tow-away," "tow-away zone," or "towing enforced," or similar phrase. This phrase shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.
 - b. Indication that parking by unauthorized motor vehicles is prohibited by a phrase such as "private parking," "leased parking," "no parking," "parking for customers only," "parking for residents only," or a similar phrase. This phrase shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and the background shall be on a contrasting background.
 1. If parking by unauthorized motor vehicles is prohibited on a 24-hour per day basis, then that prohibition shall be posted, and state the days of the week and hours of the day during which that prohibition is in effect.
 2. If parking by unauthorized motor vehicles is not prohibited on a 24-hour basis, then the days of the week and hours of the day during which parking is prohibited shall be posted.
 - c. If motor vehicles are subject to immediate towing when the motor vehicle operator steps off the property, whether the operator conducts business on the property or not, then the signs required by this Ordinance shall include the language "If you leave this property, your vehicle is subject to being towed. This includes patrons who are frequenting business on this property" or similar language which conveys the message that even if a business on the property was or will be frequented, if the operator leaves the property, the vehicle may be towed. This message shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

- d. The name and telephone number of the towing and storage service at which a person available to release the motor vehicle that has been towed, removed, or immobilized may be contacted. The name and telephone number shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.
- e. Language such as "If a tow has been initiated but the vehicle has not been removed from the parking lot, the vehicle must be released upon payment of a release fee" or similar. This message shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-154. Report to police department required.

Any towing service that engages in a tow subject to this article must, within 15 minutes of removing the motor vehicle from the private property, report to the Cary Police Department by telephone communication the fact that a motor vehicle was towed. The tow service must also provide the police department with (i) a description of the motor vehicle including make, color, and license tag number; (ii) the location from where the motor vehicle was towed; and (iii) the location of the storage lot where the motor vehicle is intended to be held.

(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-155. Response time; towing receipt required; methods of payment.

(a) The towing or storage service shall maintain a telephone number for the purpose of receiving calls from the owners or operators of towed motor vehicles. Calls to the telephone number (i) shall be immediately answered by a person; or (ii) a call back shall be initiated, by a person, within 30 minutes of a message being left on voice mail or answering machine type device. A person with the authority and ability to release the motor vehicle shall respond to the location of the vehicle within two hours of a request for release being made during a phone call or by voice mail or answering machine message; unless (i) the request for release is made between the hours of 12:00 a.m. and 6:00 a.m. and (ii) the motor vehicle was towed more than two hours before the request for release was made, in which case a person with the authority and ability to release the motor vehicle shall respond to the location of the vehicle at or before 8:00 a.m.

(b) The towing or storage service shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:

- (1) The name, address, and telephone number of the towing service.
- (2) Sufficient information to allow the employee who towed the motor vehicle to be identified.
- (3) A total fee with a breakdown of towing and storage fees.
- (4) A clear and accurate reason for the towing and the date and time of the towing. Receipts shall not use descriptions that might cause individuals to associate private property towing with municipal action.

(c) The towing or storage service shall accept as payment for any fees related to towing regulated by this Ordinance (i) cash; and (ii) either MasterCard or Visa; and (iii) one other nationally recognized credit or debit card (such as MasterCard, Visa, American Express, Discover, or JCB).

(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-156. Release prior to tow; retrieval of personal property.

(a) Any tow service that has initiated a tow subject to this Ordinance by, at a minimum, positioning a tow truck or wrecker in preparation for securing the motor vehicle to the tow truck by a hook, chain, cable, or similar device, but has not removed the motor vehicle from the private parking lot, must upon request of the motor vehicle operator, release the motor vehicle upon payment of a release fee.

(b) Any towing or storage service subject to this article shall, upon request of the motor vehicle owner or operator, permit the motor vehicle owner, operator, or designee to have access to the motor vehicle for the purpose of retrieving personal property from the motor vehicle.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-157. Regulations for tow storage lots.

(a) The tow storage lot shall be located within 15 miles of the parking lot from which the motor vehicle is towed.

(b) Tow storage lots shall be clearly signed in accordance with all applicable local and state requirements, stating the name, address, and telephone number of the tow storage lot. Tow storage lots shall be secured and lighted in such a manner as to keep the motor vehicle safe from break-ins or damage while in storage. The storage yard shall be fenced and have surface lighting sufficient for transacting nighttime business.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-158. Violations; responsible party.

Failure to conduct a tow in compliance with the requirements of this Article IV is a violation of this Article IV. In addition, it is a violation of this Article IV to:

- (a) conduct a non-consensual tow from a private parking lot that is not properly posted pursuant to section 20-153;
- (b) to engage a towing company to conduct non-consensual towing from a private parking lot if the private parking lot is not properly posted pursuant to section 20-153; or
- (c) to engage a towing company that does not meet the requirements of this Article IV to conduct non-consensual towing from a private parking lot.

Any person or towing company who conducts a non-consensual tow in violation of this Article IV, and any person who engages a towing company in violation of this Article IV, may be charged with violation of this Article IV. A person shall be deemed to have engaged a towing company if that person owns, manages, or operates any private parking lot, or portion thereof, from which a towing company performs non-consensual tows.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Sec. 20-159. Penalties.

(a) *Civil penalty.* Violation of this Article IV shall subject the offender(s) to a civil penalty in the amount of \$100.00. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: \$250.00
Third offense within one year: \$500.00
Fourth offense within one year: \$750.00
Fifth and any subsequent offense within one year: \$1,000.00

- (1) Once the one year period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new one year period.
- (2) Violators shall pay any issued penalty within 72 hours of the issue date and time. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. A police officer may issue a citation for violations of this article.
- (3) Appeal of a civil penalty amount may be made to the Town Manager or designee within 30 calendar days from the date of issuance by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the penalty or fine, the Town Manager or designee may consider the following:
 - a. the gravity of the violation;
 - b. any action taken by the violator to correct the violation;
 - c. the cost of the action to correct the violation; and
 - d. any previous violations committed by the violator, on the same or different site.

(b) *Remedies.* This article may also be enforced through equitable remedies issued by a court of competent jurisdiction.

(c) *Criminal penalty.* In addition to, or in lieu of, such civil penalties or other remedies, violation of this article shall constitute a misdemeanor.
(Ord. No. 2017-Code-03, § 1, 2-23-2017)

Secs. 20-160—20-169. Reserved.

ARTICLE V. BUSINESS IMPROVEMENT DISTRICT

Sec. 20-170. BID fee mitigation.

(a) *BID Fee Mitigation Program and Purpose.* To support, encourage and advance the timing of construction of new development that significantly advances and supports the six policies for Cary's Downtown ("Downtown Policies") set forth in the Imagine Cary Community Plan ("ICCP"), the Town may itself pay BID Fee Mitigation for any development, redevelopment, or reuse project ("Development") in Cary's Downtown Business Improvement District ("BID" or "Downtown") that would otherwise be required to pay Development Fees (as defined herein).

(b) *Eligibility.* To be eligible for BID Fee Mitigation the Developer must demonstrate all of (i) through (v) that follow:

- (1) the Development for which the BID Fee Mitigation is proposed is located within the BID;
- (2) if the developer is not the property owner, the developer must demonstrate it has a legally enforceable right to acquire and develop the property that constitutes the Development;

- (3) the Development must be the subject of a Development Agreement between the developer and the Town;
- (4) the Development Agreement must provide for payment of BID Fee Mitigation by the Town;
- (5) the Development Agreement must address Development of the property in a manner that meets or addresses at least one of the following:
 - a. is consistent with and advances the ICCP vision of a vibrant, sustainable, and pedestrian-oriented Downtown;
 - b. has an emphasis on office, denser residential, retail, entertainment and/or civic uses;
 - c. meets to an acceptable degree one or more of the Downtown Policies, including:
 1. highlights and complements the character of the ICCP Downtown Subarea in which it is located through architectural design and public art;
 2. contributes to a common identity for and experience in Downtown, including framing the streetscape and helping to define the unique character for the ICCP Downtown Subarea in which it is located;
 3. increases connectivity and cohesion between Downtown Subareas;
 4. supports a multi-activity destination with parking and related infrastructure for biking, walking, transit and driving; or
 5. includes a range of uses.

(c) *Definitions.* For purposes of this section 20-170, the following definitions apply.

BID Fee Mitigation means the payment by the Town of all or a portion of the Development Fees for an approved Development.

Development Agreement means a Reimbursement Agreement as defined in LDO section 3.24; a façade improvement agreement; an agreement authorized by G.S. Chapter 158, Article 1; Chapter 160D, Article 10; or 160D-1315; or any agreement approved by Council.

Development Fees means utility system development fees; transportation development fees; and/or in the case of multi-family residential development, multi-family recreation fund payments.

(d) *Payment.* Payment for approved BID Fee Mitigation and other terms and conditions of the BID Fee Mitigation shall be in accordance with the Development Agreement.
(Ord. No. 2020-Code-02, § 1, 8-20-2020; Ord. No. 2021-Code-02, 6-24-2021)

CARY CODE OF ORDINANCES