

ORDINANCE NO. 2023-____ - __

AN ORDINANCE TO INCORPORATE LOCAL ACTS INTO
THE CHARTER OF THE TOWN OF APEX

WHEREAS, North Carolina General Statutes Chapter 160A-496 authorizes the Town Council to incorporate local acts into the Town's Charter and prescribes a process by which such incorporation may be accomplished;

WHEREAS, pursuant to NCGS 160A-496 the Town Attorney may recommend to Town Council to adopt an ordinance to incorporate local acts into the Town Charter and the Town Attorney may suggest a provision of catchlines or other modifications in arrangement or form that do not change the provisions themselves as necessary to effect an orderly incorporation of local laws into the Town Charter;

WHEREAS, when Council adopts an ordinance amending the Town Charter to incorporate local acts, the Town Clerk shall file a certified true copy of the ordinance with the Secretary of State and the Legislative Library;

WHEREAS, the Town Attorney recommends incorporating local acts into the Town Charter so that Council, staff, citizens, and other interested parties may more easily access the laws applicable to living and conducting business in the Town of Apex; and

WHEREAS, the Town Council wishes to act according to the advice and guidance provided by the Town Attorney.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Upon recommendation of the Town Attorney pursuant to NCGS 160A-496, Article VI of the Charter of the Town of Apex is hereby amended to read as follows, with additions shown as bold underlined text:

Sec. 6.8 – Procedure for permanently closing streets and alleys limited to corporate limits.

- (a) When the Town of Apex 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 city 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 Apex 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.

(S.L. 1989, Ch. 279)

Sec. 6.9 – Compliance with Swift Creek Management Plan.

- (a) The Town of Apex shall not adopt any ordinance authorized by Chapter 160D of the General Statutes, or under any local Act or Charter provision relating to the subject of that Chapter, 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 Apex 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 Apex 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 Apex 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 Apex 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 Apex zoned or rezoned the subject area in anticipation of providing utilities to the area.

(S.L. 1998, Ch. 192)

Sec. 6.10 – Standing of Town to enforce Swift Creek Management Plan.

- (a) The Town of Apex, 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 Apex 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 Sec. 6.9 of this Charter.
- (b) Any person who resides in the Town of Apex 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 Sec. 6.9 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 Apex 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 Apex 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 Sec. 6.9 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 Sec. 6.9 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 Sec. 6.9 of this Charter.
- (f) If the court determines that there has been a violation of subsections (a) through (c) of Sec. 6.9 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 Sec. 6.9 of this Charter.

(S.L. 2005, Ch. 89)

Sec. 6.11 – 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 Apex 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 Apex. Notice of the hearing shall be given in accordance with G.S. 160D-601.

(S.L. 2000, Ch. 108)

Sec. 6.12 – Electronic notice for certain public hearings.

The Town Council for the Town of Apex may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the Town of Apex Internet site. Ordinances adopted pursuant to this section shall not supersede any North Carolina 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.

(S.L. 2007, Ch. 86)

Sec. 6.13 – Standards for annexation of noncontiguous areas; Removes limitation of satellite corporate limits to ten percent of area within the primary corporate limits.

A noncontiguous area proposed for annexation must meet all of the following standards:

- (a) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the Town of Apex.
- (b) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of North Carolina General Statutes Chapter 160A-58.1.
- (c) The area must be so situated that the Town of Apex will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- (d) If the area proposed for annexation, or any portion thereof, is subject to subdivision regulation as described in G.S. 160D-802, all of the subdivision must be included.

(S.L.2009, Ch. 53)

Sec. 6.14 – Authority to use wheel locks.

The Apex Town Council of the Town of Apex may provide, by ordinance, for the use of wheel locks on illegally parked vehicles for which there are three or more unpaid parking tickets which are at least 90 days overdue. The ordinance shall provide for notice or warning to be affixed to the vehicle, immobilization, towing, impoundment, appeal hearing, an immobilization fee not to exceed fifty (\$50.00) dollars, and charges for towing and storage. The Town of Apex shall not be responsible for any damage to an immobilized illegally parked vehicle resulting from unauthorized attempts to free or move that vehicle.

(S.L. 2009, Ch. 152)

Section 2. It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Charter and the sections of this ordinance may be renumbered to accomplish such intention.

Section 3. Severability, Conflict of Laws. If this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Filing of the Ordinance. The Town Clerk shall file a true copy of this ordinance with the North Carolina Secretary of State and the North Carolina General Assembly Legislative Library.

Section 5. Effective Date. This ordinance shall be effective upon adoption.

Introduced by Council Member: _____

Seconded by Council Member: _____

This the ____ day of _____, 2023.

Attest:

TOWN OF APEX, NORTH CAROLINA

Allen Coleman, CMC, NCCCC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe,
Town Attorney