



December 27, 2019

To: Mayor Gilbert and Members of Town Council

From: Drew Havens, Town Manager

Re: Playing Upon Streets Ordinance Review

### **Background**

At the November 6, 2019 Town Council, a resident spoke, during Public Forum regarding her concerns with the Town's current ordinance that restricts playing upon the streets. Her written appeal to Council, backed by numerous signatures on an online petition, included the following:

Upon reviewing Sec 14-28 I am quite compelled to request and advocate that this ordinance be amended immediately. Firstly I believe that an amendment should differentiate residential streets in private neighborhood communities. Our neighborhood in Scotts Mill is FULL of children who routinely play outside. In their yards, on the sidewalks, and yes sometimes in front of their driveways in the street. I have not witnessed any of them impeding traffic, preventing maintenance, or any of the other conditions stated in the ordinance that would otherwise prevent them from doing so. Secondly I would like an amendment to include some element of parental supervision as we have all diligently strived (countless hours of our weeks and years) to provide our children in order to keep them safe. This ordinance removes this inherent right as a parent. That regardless of standing feet away from your child while teaching them to ride their bike without training wheels...your neighbor may still call the police to report you.

Following this meeting, I asked that staff review the current ordinance and evaluate the efficacy and appropriateness of the current ordinance and provide a narrative that includes information relative to leaving the ordinance as is, amending the ordinance (including suggested amendments) and an outright repeal of the ordinance.

### **History**

Our ordinance Section 14-28 was enacted in 1973 to prohibit play on all streets, and amended in 2011 to allow children to play upon limited cul-de-sac or dead-end streets. Based upon the input from staff who were here in 2011 and involved in the conversation related to this amendment, staff was directed to come up with guidance, understanding that Council, under public pressure, wanted to allow "playing" in streets while acknowledging it may be more or less risky under certain conditions. The conversation at that time began with reports of kids playing in street, supposedly being rude and not moving for residents trying to access their driveway, so police

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were called. Per Captain Stephens, the Police Department and Chief Jack Lewis were opposed to the change in 2011 to allow playing in the streets. She notes that “Public safety was, and continues to be, at the forefront of the concerns we have with allowing playing in the streets”.

### **Current Situation**

The amended Section 14-28, shown in its entirety in the Appendix A to this memorandum, permits playing upon limited streets and provides a definition of upon which streets this activity is allowed. Since enactment, the Apex Police Department reports receiving complaints from residents about parents and children shutting down the cul-de-sac or dead-end streets to all traffic thus not allowing residents to gain access to their homes without issue. Parents and children have set up cones to block the street requiring other residents to move the cones to gain entry to their home. They have also set up soccer/hockey goals and left the cul-de-sacs and dead end streets strewn with bicycles and toys, again prohibiting other residents of the cul-de-sac or dead-ends street to be able to back out or pull into their driveway. Residents have complained to police, that if they move the toys or request they be moved, a verbal altercation ensues.

The police department has also had issues with the ordinance requirement that a child under the age of 15 be directly supervised by a parent, guardian or another adult. They have received complaints about children playing without supervision and, upon responding, the parents state they can see the child out the window or if they are in the garage working and they determine that to be direct supervision. Staff feels that the spirit of the ordinance and “direct supervision” was that the parent or guardian was actively involved in watching the children play and in the immediate area. Without a clear definition of “direct supervision” police have found the level of supervision varies by the parent.

### **Examination of Other City/Town Ordinances**

As part of this effort, our Legal team researched similar ordinances in other local cities and towns. Summarized below are the ordinances reviewed.

Raleigh (1959): It shall be unlawful to play any game of any description or to throw any stone, snowball, or other missile by bean shooter or other such device upon the streets and sidewalks of the City.

Holly Springs (1982): Whenever authorized signs are placed designating any street, or part thereof, as a play street, no person shall drive a vehicle upon any such designated street, except persons who have business, or who reside, within the designated area; all such persons shall exercise the greatest care when driving upon any such play street. [Note: the term “play street” is not defined, nor has the Town designated any “play streets”].

Wake Forest (1985): No person shall play ball, bat or catch ball on any of the streets or sidewalks of the town in the business district [Note: specific to one part of town only]. No person upon roller skates, inline skates or riding in, or by means of, any coaster, toy vehicle or similar device,

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shall go upon any roadway, unless it be while crossing a street at a crosswalk or intersection, except upon streets set aside as play streets. [Note: “play streets” is not defined in the ordinance].

Garner (1959 with 2003 update): Playing games, throwing, missiles on streets, sidewalks, using, erecting and maintaining recreational devices in streets and rights-of way.

(a) All games of every description, and throwing stones or other missiles, are forbidden upon the streets and sidewalks of the town.

(b) No person may erect any type of recreational device in a public street or right of way. "Recreational device" as used herein, includes but is not limited to, basketball goals, soccer goals, hockey goals, skate board ramps, pylons for road courses for bicycles and skates, and any similar devices which encourage or aid in using streets or public rights-of way for play. "Unlawful recreational device" as used herein includes any such device when located in a public street or right-of way.

(c) No person may aid or abet a minor in the erection or use of any unlawful recreational device.

(d) No person may allow an unlawful recreational device to remain erected in a public street or right-of-way abutting the real property owned or occupied by that person.

[Note: Their ordinance includes penalties for violating this section and how unlawful items are removed and reclaimed].

Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or position thereof, except drivers of vehicles having business or whose residences are within such closed area, and then any such driver shall exercise the greatest care in driving upon any such street or portion thereof. [Note: No “play streets” have been designated].

Durham (1982): The city manager shall have authority to declare any street or part thereof a "play street" and to place appropriate signs or devices in the roadway indicating and helping to protect the same.

Fuquay-Varina (1977): Whenever authorized signs are placed indicating any street, or part thereof, as a play street, no person shall drive a vehicle upon any such street, except persons who have business, or who reside, within the designated areas; all such persons operating a vehicle on such street shall exercise the greatest care when driving upon such street.

Cary: No ordinance in place regarding playing upon streets other than one that prohibits the use of roller skates and skateboards between sunset and sunrise.

Morrisville: No ordinance in place regarding playing upon streets.

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## Evaluation of Alternatives

### Option 1: No change.

While aspects of the current ordinance, as explained above, can lead to confusion, neighbor confrontation, and calls for enforcement when annoyed by children playing, these issues have been able to be mediated by our police department when all parties are reasonable and understanding. However, if a party insists on a literal interpretation/enforcement, it can lead to continued difficulties.

The current ordinance also suggests that playing upon certain streets is considered safe. As explained in Option 3 below, staff does not agree with that suggestion.

### Option 2: Amend the Ordinance to be more permissive.

This appears to be the option sought by the citizen who spoke. It is important to note that the reference in the written comment from the citizen regarding “private neighborhood communities” would not provide the relief sought by the person asking for an amendment as the situation at hand resulted from play in public street. While there are a limited number of private streets in Apex, it would be difficult to enforce our ordinance on private property.

It is true that while this option would allow playing upon the street from a local ordinance perspective, many activities prohibited in our ordinance would also run afoul of State law which prohibits obstructing the flow of traffic and other sections of our Ordinance which prohibit placing items on streets and sidewalks (See Appendix B). So, our police could still be called to respond and asked to take enforcement action under other law/ordinance provisions.

An alternative to consider under this option would be to, like other cities/towns, modify our ordinance to allow for the designation of “play streets”. This would require a process for designation and a set of rules regarding what can/cannot be done on these streets from both play and traffic perspectives.

This option would likely increase the misconception that the Town considers playing in the streets to be a safe activity. From a public safety perspective, the Apex Police Department has expressed opposition to any change in the ordinance that would expand the areas in which it is lawful, under our ordinance, to play upon the streets.

### Option 3: Amend the Ordinance to be more restrictive.

From a traffic and pedestrian safety point of view, it may be best to amend the ordinance to remove sections B and C which refer to play on certain streets. This would revert the ordinance back to its original form that prohibited play upon the streets and created restrictions on play upon sidewalks.

This comes from the perspective that streets are designed to allow the travel of motor vehicles and bicycles, and, in some cases where sidewalks/paths do not exist, the travel of pedestrians. In the situation where sidewalks do not exist, it is incumbent upon the pedestrian to use the road

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surface in accordance with state law, and upon the operator of a motor vehicle to obey the law as well. Having an ordinance that allows play on certain streets, or, if amended as requested in the petition, a greater number of streets, may give users of the streets for play a false sense that their activity is safe.

Option 4: Repeal the Ordinance.

A repeal of the ordinance would not mean that playing upon the streets would be permitted. If play were determined to be impeding traffic, our police would have to rely upon State statutes and other Town ordinances to take enforcement action.

### **Conclusions**

One of the statements in the e-mailed appeal to examine our ordinances suggests that one cannot use streets/sidewalks to teach a child to ride a bicycle without training wheels. In fact, our current ordinances do not prohibit the safe use of streets and sidewalks for the riding of bicycles so no one would be prohibited from teaching a child to ride. Use of public streets by bicycle is regulated by State law in order to attempt to make that use as safe as possible. Section 20-3 of our ordinances merely requires that someone under the age of 16 wear a helmet when riding a bicycle (see Appendix A for full text).

Staff, from a public safety perspective, would not support any expansion of the areas in which playing upon the streets is permitted. Our ordinances do not, as asserted, infringe on a person's ability to recreate outside their homes other than they are clear that this outside recreation should not happen upon the streets that are designed and maintained for the use of vehicles. No one wants to create a situation where there is a higher likelihood of interaction between children playing and motor vehicles. Our parks, greenways, side paths, and sidewalks are all designed to reduce the potential for pedestrian/vehicle interaction. Similarly, roadways are designed in a way that offers some separation from yards (curbs/swales) where people could be enjoying being outside their homes.

Please let me know if you need further from me or others on our team.

## Appendix A

### **Sec. 14-28. - Playing upon streets, sidewalks and public places.**

- (a) No person shall play at any game upon any street or use any street for the purpose of recreation.
- (b) From the later of sunrise or 7:00 a.m., on any given day, until sunset, except when it is raining, snowing, foggy, smoky or dim because of heavy cloud cover or other conditions, "limited cul-de-sac or dead-end street areas" within the town, as defined below, are excepted from subsection 14-28(a), provided that no person shall engage in any game or recreational activity upon limited cul-de-sac or dead-end street areas within the town in any manner so as to:
  - (1) Impede vehicular traffic;
  - (2) Interfere with maintenance activities such as street resurfacing or utility repairs;
  - (3) Endanger property;
  - (4) Endanger the life, limb or health of any person;
  - (5) Prevent the full and complete use of such street by other persons for the intended purposes thereof;
  - (6) Constitute a breach of the peace; or
  - (7) Constitute unreasonable annoyance to persons of ordinary sensibilities.

The exception for "limited cul-de-sac or dead-end street areas" stated in this subsection 14-28(b) does not apply to a child, 15 years old or younger, unless he is being directly supervised by his parent, legal guardian or another adult who has been directly and specifically authorized to supervise him by his parent or legal guardian.

- (c) For the purposes of section 14-28, "limited cul-de-sac or dead-end street areas" are those limited areas of Apex street system cul-de-sacs and dead-end streets within the town that are located within 100 feet from the end of the pavement of the cul-de-sac or dead-end street and not located within 100 feet of an intersection.
- (d) No person shall engage in any game or recreational activity upon any sidewalk or public place in the town in any manner so as to:
  - (1) Impede pedestrian traffic;
  - (2) Interfere with maintenance activities such as resurfacing or utility repairs;
  - (3) Endanger property;
  - (4) Endanger the life, limb or health of any person;
  - (5) Prevent the full and complete use of such sidewalk or public place by other persons for the intended purposes thereof;
  - (6) Constitute a breach of the peace; or
  - (7) Constitute unreasonable annoyance to persons of ordinary sensibilities.

### **Sec. 20-3. - Protective helmets required.**

- (a) Every person less than 16 years of age operating or riding a bicycle, moped, inline skates, roller skates, skate board, scooter, or other similar vehicle or device on a public street, sidewalk, greenway, or other right-of-way or on any property owned or controlled by the town shall wear a protective helmet on his head, with the chin strap securely fastened under the chin. Such helmet shall be fitted to the size of the wearer and shall meet or exceed the standards for bicycle helmet use and wear asset by ANSI (American National Standards Institute) or the Snell Memorial Foundation.
- (b) Riding a vehicle or device includes riding as a passenger.
- (c) No parent or guardian of any juvenile shall knowingly allow such juvenile to violate this section.

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## Appendix B

### North Carolina General Statutes

#### **20-174.1. Standing, sitting or lying upon highways or streets prohibited.**

(a) No person shall willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Violation of this section is a Class 2 misdemeanor. (1965, c. 137; 1969, c. 1012; 1993 (Reg. Sess., 1994), c. 761, s. 17.)

#### **Section 160A-296. Establishment and control of streets; center and edge lines**

(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.

(4) The power to close any street or alley either permanently or temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way. No fee or charge for activities conducted in the right-of-way shall be assessed on businesses listed in G.S. 160A-206(b), except the following:

a. Fees to recover any difference between a city's right-of-way management expenses related to the activities of businesses listed in G.S. 160A-206(b) and distributions under Article 5 of Chapter 105 of the General Statutes.

b. Payments under agreements subject to G.S. 62-350.

(7) The power to provide for lighting the streets, alleys, and bridges of the city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

### Other Applicable Town Ordinances

#### **Sec. 18-11. - Obstructions—Structures; vehicles.**

(a) It shall be unlawful to build, erect, construct or place any porch, steps, fence, wall, storage pod, dumpster, construction materials, construction equipment, similar items, or other obstruction whatsoever in or over any of the streets or sidewalks. It shall be unlawful to obstruct any sidewalk or street with any buggy, wheelbarrow, wagon, automobile, truck or other vehicle, railroad car, chair, bench, open gate, chicken coop, box or other article; provided, that a margin not exceeding two and one-half feet in width on the inside of the sidewalk in the business blocks shall be allowed for the exhibition of merchandise by abutting merchants; provided further, that this section shall not apply to baby carriages and invalid chairs rolled on the sidewalks in such manner as not to obstruct the same.

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**Sec. 18-12. - Same—Boxes, etc.; building materials.**

No brick, stone, wood or other substances obstructing the free passage of persons or vehicles shall be placed or suffered to lie in any of the sidewalks, alleys, streets or other public ways of the town, nor shall any person place thereon any boxes, crates, casks or barrels of any description or any other obstruction of any kind; provided, that any person erecting a building may with permission place building material for immediate use on the streets in such a way as to not interfere with the usual traffic.

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