

Town of HOLLY RIDGE

PO Box 145 * Holly Ridge, NC 28445 * Phone (910) 329-7081 * Fax (910) 329-1593

HOLLY RIDGE TOWN COUNCIL

Continuation of the

Special Meeting

January 30th, 2018

Discussion of Contract per NCGS 143-318.11 (a) (5)

Workshop to Discuss Possible Amendments to the

Code of Ordinances of the Town of Holly Ridge

Held on February 5th, 2018

5:00 P.M.

Mayor Dingler called the Special Meeting of the Holly Ridge Town Council back to order at 5:00 P.M. at the Holly Ridge Town Hall. Council members present were Mayor Pro-Tem Stanley, Councilman Hines, Councilwoman Bragg, Councilwoman Hall and Councilwoman Collins. Also present were Town Manager, Carin Faulkner, Interim Town Manager, Billy Joe Farmer; Town Clerk, Heather Reynolds and Attorney Kitchen.

Persons Wishing to Address the Council

There were none.

Closed Session

Workshop to Discuss Possible Amendments to the Code of Ordinances of the Town of Holly Ridge

Mr. Farmer said the Town Council had begun working on the items addressed in the legal review as needing to be discussed with the legal counsel. He went on to explain also added a few more. Listed below are the topics remaining for discussion:

- Smoking
- Signs
- Noise

- Concealed Carry
- Curfews for minors
- Cell towers
- Penalties
- Junk vehicles
- Gaming machines
- Golf carts

Smoking

Mr. Farmer stated throughout the ordinances the only building that is designated as a no smoking facility is the Community Center. Attorney Kitchen explained he believed the other buildings were dropped off of the code at some point and what he heard at the last meeting was the Town Council wanted smoking banned in all of the Town buildings. Mayor Dingler asked if there was a state law about smoking. Attorney Kitchen stated local governments are allowed by a statute to ban smoking specifically.

The Town Council was in agreement to add all Town building to No Smoking. Councilman Hines asked if they needed to include the Town vehicles as well. Attorney Kitchen stated no, that is addressed in the Personnel Policy and this mainly pertains to people off of the street. Mayor Dingler asked if the ordinance needs to say a designated areas and Attorney Kitchen answered just leave it at all buildings. Councilman Hines asked what about the pavilions at the park? Mayor Dingler said that is considered an open area and there is air moving around all of the time. Councilwoman Bragg said the Town could say “inside enclosed Town buildings”. Attorney Kitchen stated all of the buildings can be listed individually and that would not be hard to do.

Small Cell Towers

Attorney Kitchen stated he has drafted a small cell tower ordinance and these are placed on light poles, traffic signals, and they place roughly one per block. He went on to explain the Town is required to allow them and they are not to be under the same regulations as the cell towers. If they are placed in a state right of way, the Town has no regulation of them at all. If they are not in the state right of way, the Town is able to regulate the small cell towers. Attorney Kitchen stated currently there is no ordinance that covers this and presented the Town Council with the proposed ordinance. He explained the Town can try to make them conceal them as opposed to sticking out in front of a house, but it is limited.

Attorney Kitchen stated he did not want to spend the time or money going through and changing the Table of Uses. The Table of Uses will have to be changed to allow small cell towers where they are permitted. Attorney Kitchen said that is something the Council of Governments could possibly do.

Mayor Dingler asked what the just is of the proposed ordinance rather than everyone sitting there reading it. Attorney Kitchen explained basically to have them concealed as much as possible and they would need to be allowed on the light poles. We are requiring them to place the boxes up, so they are not ran into. We are allowing them one box per pole and 30 feet apart, resulting in one per block. Attorney Kitchen stated eventually people will not have routers or wires coming into their homes. There is also a proposal for the government to take over the 5G network.

Attorney Kitchen stated he proposes the Small Cell Tower Ordinance going under 154.264.1 because 154.264 is already the regular cell towers.

Attorney Kitchen said all of the ordinances need to be adopted at some point, the question is does the Town Council want to adopt them individually as you go along and wait until everything is adopted to send it in or does the Town Council want to go through them, have them ready and adopt all at once and then send the ordinances in. Mayor Dingler stated she would like for all of the ordinances to be adopted at once. Councilman Hines stated there would need to be a Public Hearing. Attorney Kitchen explained certain ones will need special procedures such as anything involving zoning and land-use would need to go to the Planning Board and then to the Town Council for a Public Hearing. Attorney Kitchen further stated there would be one giant ordinance adopting everything.

The Town Council was in agreement to adopt the Ordinances all at once when they are complete.

Junk Vehicles

Attorney Kitchen stated the statue gives two ways to remove abandoned vehicles from private property. The first way is the Town being responsible to hire someone to come and get the vehicle, pay, and have the vehicle sold. The Town would also be responsible for setting up an appeal board, and that is what is in the current and proposed ordinance.

Attorney Kitchen explained the other way to handle this type of situation is to set it up just like the State does, you would place a sticker on the vehicle, let it sit for three days, and then have someone come and tow it off. In this scenario the Town doesn't pay for anything. The only downside would be making sure there is actually someone to come and tow the vehicle. Councilman Hines asked the Town could contract with a company to haul them off. Attorney Kitchen said most places have the police tag it and then there is a rotation of people who can tow them. Councilman Hines stated the second option would be the best.

The Town Council was in agreement to let the Police Department handle abandoned vehicles.

Councilwoman Hall asked if Code Enforcement still will handle to other vehicles. Attorney Kitchen stated that is correct.

Councilman Hines said the Code Enforcement Officer said this could not be enforced. Attorney Kitchen stated that is correct because the current ordinance is contradictory. Councilman Hines asked if they will now be enforceable and Attorney Kitchen stated yes with the changes.

Councilwoman Collins asked about the escalation for vehicles that are dealt with by zoning officials. Attorney Kitchen explained all Zoning is enforced three ways: civil penalties which allows fees to be assessed; then they can be taken to court and have a civil injunction, and following that would be citing for contempt. Councilwoman Collins asked what the Town Council wants this junk ordinance to be, where the vehicles must be removed or they can just hide them in their backyards.

Attorney Kitchen stated the one change because the statute requires they have the right to appeal the decision to the district court.

Councilwoman Collins asked if zoning is reactive to complaints or is it proactive in controlling before violations. Attorney Kitchen stated that question is actually what caused the legislation to change because in the past most places did not go out and look for zoning complaints until someone came up and reported it. The legislature is now putting in the Statutes that if a zoning violation that is known of is left alone for three years and no action is taken, then in the future no action can be taken. Councilwoman Collins asked if this was something the Code Enforcement Department needed to be aware of, as to not get the Town into a pickle. Attorney Kitchen stated that is a policy decision. Councilman Hines said this is something the Town Council has preached for years is that it be enforced and some of it was because it couldn't be enforced and the other part he doesn't know why. Councilwoman Collins asked if the Town Council could be provided with a list of known unenforceable violations so that it can be looked at and identify why they are unenforceable. Councilwoman Collins stated then they can be rectified or find out why they cannot be enforced. Councilman Hines stated he asked about getting that a year ago and he hasn't ever seen it.

There was discussion about the various ways violations have been handled. Councilman Hines said the Ordinance says we can send a letter but we weren't sending the letters. Councilwoman Hall stated there are areas that have been sitting out there a while such as Mr. Williams's property because it can get junky. He goes out and cuts the grass but never finishes and it is never really resolved. Councilwoman Collins asked about developing a policy saying we want code enforcement completed in a timely manner, if there is a reason why it cannot be completed by policy then the Town Council or Manager needs to be notified so action can be taken to correct that. Councilwoman Hall stated she asked for the same thing, receiving a report about open issues from Code Enforcement. Councilwoman Collins said there has to be an escalation process to get to a resolution. Councilman Hines stated that is on the manager. Attorney Kitchen said the first step is to make sure a notice of violation has been sent, and on most of these you are probably going to find a violation was never sent. The second step is to let them know if they are in violation and it is not corrected in time, they will receive a civil penalty and at some point you can decide on going to court. Attorney Kitchen stated the Town has to enforce their ordinance or you don't have anything. There was additional discussion

about the flow of that department. Councilwoman Collins stated she is less concerned with individual violations and more concerned with correcting the procedure so that it is streamlined. Mayor Dingler stated once the Town gets everything corrected, the issues should start to be resolved. Councilman Hines used the house that burned down as an example of it didn't just happen a month ago and nothing has been done, it happened six months ago and nothing has been done. He explained this is when the board starts wondering why because there is no reason for that.

*Mayor Dingler recessed the meeting at 6:00 p.m.
Mayor Dingler called the meeting back to order at 6:17 p.m.*

Signs

Attorney Kitchen stated American Legal noted several issues with the current ordinance concerning signs. He went on to explain all signs must be treated the same and our current ordinance has some serious problems and will need to be rewritten. The current ordinance is like many other Town's ordinances and we have done what all of the other Towns and Counties have done over the last 30 years. There are categories of signs and there are separate restrictions on each category and are treated differently depending on the type of sign. Attorney Kitchen stated the fee charged for political signs and cannot be allowed unless you are going to charge that amount for every sign. When Towns are dealing with first amendment speech, the Town must be content neutral and a political sign would have to be treated the same as a yard sale sign.

Attorney Kitchen stated it may be a good idea to find someone that already has an ordinance. He went on to explain a lot can stay in the Ordinance but the categories cannot and advised the Town Council to be real careful with permits because it cannot be based on content. Councilwoman Collins suggested rather than just finding an ordinance, shouldn't we have an idea of what we want. Attorney Kitchen stated a permit bothers him when dealing with first amendment right and the ordinance must be uniform.

Councilman Hines said he has an issue with the distance between signs because the way it was originally wrote was 1,000 feet for off-premise signs on Highway 17 and each one of those billboards are 1,000 feet apart. Councilwoman Stanley stated we just changed that to 100 feet. Councilman Hines said even with it at 100 feet, you have businesses opening down Sound Road and on Highway 17, they and then the business signs will not have room. Councilman Hines asked if the Town can regulate signs that are directional to a business that are not in the Town limits. Councilwoman Collins suggested a way to regulate signs based on size.

Councilman Hines stated we are not even looking out for the businesses. Councilwoman Collins asked when it became the Town's responsibility to promote private businesses. Councilman Hines stated it is not, but we have to help them because we want them to come into Town but we don't let them promote their business. Councilwoman Bragg agreed this would be a good reason to see someone else's ordinance because there is no reason to reinvent

the wheel. Councilwoman Bragg agreed with Councilman Hines about not wanting to bring a business here to Town and not be able to have a sign.

Councilwoman Collins said Leland is growing and they don't allow signs, and she doesn't feel like regulating signs is the reasons businesses are not coming to Town. Councilman Hines stated regulations such as this hurt businesses and Leland is the fastest growing and he didn't feel we didn't have that luxury. Councilwoman Collins stated we are the second fastest growing, so she felt we do have that luxury. She went on to say the Town needs to look at why Surf City and Leland regulate signs and have businesses flocking to them. Councilman Hines stated we have a business wanting to come into Town now and they cannot put there warehouse up because of all the regulations. Councilwoman Collins said while the Town Council is looking at the ordinance review now this is what we need to look at, and we can pull someone's ordinance and have bones to flesh out but the Town Council needs to have some idea of what to put on the bones, otherwise it will end up being two more hours next time too arguing about the signs. Councilwoman Collins stated it is not about how far apart signs are, rather as the Town grows what the Town Council wants the Town to look like.

Mayor Dingler suggested the Town Council read the ordinance about the signs and the Town Council come back with their list of suggestions. Attorney Kitchen reminded the Town Council the sign ordinance would need to go to the Planning Board and then back to the Town Council for Public Hearing.

Penalties

Attorney Kitchen asked the Town Council to look at Section 154.999 in the draft Ordinance.

Attorney Kitchen suggested the Manager looking at each section under the penalties to make sure they are not messed up.

Attorney Kitchen suggested the following changes:

154.999 (B) change the verbiage from misdemeanor to a Class 3 Misdemeanor and fined up to \$500 and remove imprisoned.

154.999 (C) change the word District Court to Superior Court.

Attorney Kitchen stated in the Ordinance anywhere that is talking about parking violations, they are not misdemeanors and are now infractions. Attorney Kitchen stated somewhere in the Ordinance it talks about civil infractions, and there is no such thing because it should be civil penalty.

Attorney Kitchen stated in Section 10.99 (J) that the defendant shall have the right to appeal to the Board of Adjustment and did not think the Town would want to do that. Normally it would be challenged by filing suit or waiting on the Town to try to collect the civil penalty and you don't allow them to go to the Board of Adjustment.

Electronic Gaming Operations

Attorney Kitchen suggested under Section 154.257 (A) putting all state and federal laws should be met. The reason he suggests doing that is because there may be language being litigated in the Appellate Courts and if that happens, he would not suggest going after any of these types of establishments. Attorney Kitchen said under the Zoning Laws there will probably be a case litigating that exact language and the real question is can you operate a machine that is in violation of state law. He went on to explain since it is illegal under state law, it is also a violation of the Zoning Ordinance. Councilwoman Stanley said she needs to say that the lottery is gambling and it is permitted all over the United States. Attorney Kitchen explained some of the slot machines were found to have been rigged and could not be won on. Councilwoman Hall stated the District Attorneys and the Sheriffs did not care if the machines were rigged or not and they just picked the ones that didn't have the money to fight them because if they opened right back up, they could fight them. Attorney Kitchen stated the Supreme Court did care that the machines were rigged and the reason he wants the verbiage in the Ordinance is so when there is a ruling in Appellate Court, the Town will not have to do anything further and would be able to say it is in violation of the Zoning Ordinance. Councilwoman Stanley asked how they can be illegal and the lottery isn't illegal? Councilman Hines said it is because the legislature passed a law saying the lottery is going to be legal.

Noise

Attorney Kitchen explained North Carolina has some very strange court cases because the decibels were struck down. Attorney Kitchen drafted a couple different noise ordinances that complies with the court case and he would like to bring that back to the Town Council. Attorney Kitchen stated basically the ordinance says if you cannot enjoy your property because it is so noisy, that is deemed illegal.

Following discussion it was decided Attorney Kitchen would put together a Noise Ordinance and bring back to the Town Council for their review.

Weapons

Attorney Kitchen stated when this ordinance was drafted the first time the direction from the Town Council was to keep people from carrying long guns at soccer fields or around the park. He went on to say the Town would want to continue on with that same idea and since that ordinance was last adopted, there was a change in the law that says you have to allow for weapons of any kind to be stored in someone's car. Attorney Kitchen said that would need to be added under all weapons to allow storing in a person's car.

Councilwoman Collins suggested copying Section 130.01 General (A) to the smoking section of the ordinance because it lists out all of the buildings.

Mr. Farmer stated Section 130.02 -- Exceptions and Section 130.03 -- Concealed Carry contradicts one another.

Attorney Kitchen stated it is not lawful to prohibit people from carrying in the Municipal Park, this will need to be fixed because it was corrected in our current ordinances but it was left out in this revision.

The Town Council decided to delete Section 130.03 to allow conceal carry on Town owned properties.

Curfews

Attorney Kitchen stated curfews are generally unconstitutional because it is very hard to draft an ordinance that would stand up to legal counsel.

Attorney Kitchen stated under Section 131.01 Curfew for Minors – Minors are not allowed out of their homes at certain times.

Councilwoman Collins stated she has a problem with the Town regulating that preempts parental responsibility. Councilwoman Hall said it would be best to discuss with the Police Department and see if this curfew was needed. Mr. Farmer stated he held a recent Management Team Meeting and he spoke with Chief Whaley about if this would be an issue and Chief Whaley indicated it would not be an issue to not have a curfew.

Attorney Kitchen said on Page 9 of the Legal Review, American Legal lists all of the issues with a curfew in Town. Councilwoman Collins suggested placing hours on the facilities to protect the Town's assets versus a curfew.

The Town Council agreed to delete Chapter 131 – Curfew for Minors.

Golf carts

Attorney Kitchen suggested separating out golf carts and recreation vehicles from other low speed vehicles.

Mayor Dinger asked if the golf cart section would include the street legal ones. Attorney Kitchen answered no because those are regulated through the state. Mayor Dinger asked for clarification from the Town Council about what vehicles are going to be regulated. Attorney Kitchen stated it would be best to just regulate the golf carts.

Liberty Fountain was not addressed and will need to be added.

Mayor Dinger asked if the Town Council would want to review the Noise and Sign Ordinances at the Regular Meeting next week. Councilwoman Stanley felt it would be too much for a Regular Meeting. Mr. Farmer stated as long as it is just those two ordinances, it may not be too bad. Mayor Dinger asked if the Cell Tower Ordinance could go ahead and be placed on the Agenda for the Planning Board. Attorney Kitchen stated the Cell Tower Ordinance is complete and ready for their review.

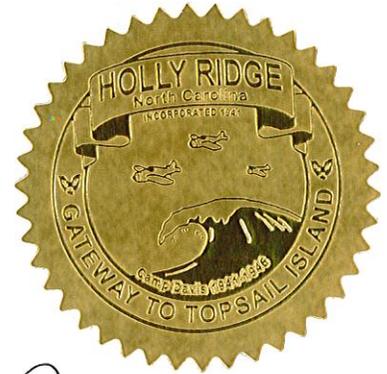
There was discussion about which sections needs to be corrected and presented back to the Town Council.

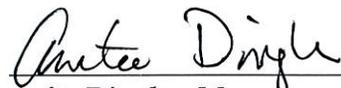
Councilwoman Collins stated tonight is the first time she is seeing the Cell Tower Ordinance and she would like to have time to review it before passing it along to the Planning Board. Mayor Dingler asked Attorney Kitchen to make the changes to the Noise and Sign Ordinances by Friday for the Agenda Packets. She went on to explain at the Regular Meeting those will be discussed as well as the Cell Tower Ordinance, once approved they will be sent to the Planning Board and then come back in front of the Town Council for a Public Hearing.

Adjournment

A motion was made by *Councilman Hines* and seconded by *Councilwoman Collins* to adjourn at 8:00 p.m. *All Agreed.*

Attest:





Anita Dingler, Mayor



Heather Reynolds, CMC, Town Clerk