

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Brian Curran, Chief of Police
Terrie Gale, Police Attorney

SUBJECT: Ordinance repeals and amendments

DATE: June 22, 2009

PURPOSE

The purpose of this report is to request that the Town Council repeal unconstitutional ordinances and conform other ordinances to state law. Certain ordinances have remained in the Town of Chapel Hill Code despite changes in United States constitutional law which has rendered these ordinances unconstitutional and therefore unenforceable. In addition, three Town ordinances conflict with North Carolina state statutes or administrative regulations.

BACKGROUND AND DISCUSSION

TOWN CODE CHAPTER 11

Four ordinances within Article I of Chapter 11 of the Town Code are partially or completely unconstitutional and are never enforced.

Town Code Section 11-1, entitled “Disorderly, boisterous conduct; cursing,” outlaws disorderly conduct by cursing or otherwise. Simply cursing, even in a public place, is protected by the First Amendment to the United States Constitution. There may be factual circumstances under which Section 11-1 could be utilized constitutionally against a person (for example, for disorderly conduct accompanied by drunkenness, or disorderly conduct that is intended and plainly likely to provoke violent retaliation and cause a breach of the peace), but only if the charging language made clear that no unconstitutional aspects of the ordinance were implicated. In actual practice, officers handling such situations charge a violation of a state statute, either N.C.G.S. Sec. 14-288.4, entitled “Disorderly conduct,” or N.C.G.S. Sec.14-444, entitled “Intoxicated and disruptive in public.”

Town Code Section 11-2, entitled “Loitering on streets, sidewalks; blocking same,” is unconstitutional except for its prohibition on obstruction of streets, sidewalks, and crossings. The obstruction aspect of the ordinance, however, is addressed by Town Code Section 11-61, entitled “Refusal to disperse when obstructing passage,” which makes it unlawful to obstruct free passage on streets, sidewalks, alleys, or public walkways, after being directed to disperse by a police officer. The Chapel Hill Police Department does not enforce Section 11-2, but instead

utilizes Section 11-61 when dealing with persons who are obstructing passage on streets, sidewalks, etc.

Town Code Section 11-3, entitled "Habitual loafing, idleness," and Town Code Section 11-4, entitled "Curfew for persons under sixteen," are both unconstitutional and are never enforced. (A curfew ordinance that would be constitutional would require many exceptions and other provisions not included within the current ordinance.)

Town Code Section 11-39.1 and Town Code Section 11- 40 concern the use of compression release engine brakes or transmission braking systems in motor vehicles. They were enacted to limit use of such brakes to emergency situations. However, the North Carolina Department of Transportation has informed the Town that State regulations permit the use of such brakes on State roads. The Chapel Hill streets where the use of such brakes was questioned are also State roads, and therefore this ordinance can not be enforced on those streets. Upon repeal of these ordinance provisions, the street signs condemning these brakes will be removed.

TOWN CODE CHAPTER 12

Town Code Section 12-3 prohibits bringing animals onto sidewalks and streets which have been closed for street fairs and other community events. It makes an exception for "a seeing eye dog." The term "seeing eye dog" should be replaced by the term "assistance animal," as defined by N.C.G.S. Sec. 14-163.1, which includes seeing eye dogs as well as other animals trained to assist persons with disabilities.

RECOMMENDATION

That the Council enact the proposed ordinance amendments and repeals.