

Ordinance #2019-28

ORDINANCE AMENDING CHAPTER 2 ENTITLED “ADMINISTRATION”, CHAPTER 18 ENTITLED “CIVIL DEFENSE” AND CHAPTER 38 ENTITLED “MISCELLANEOUS OFFENSES”

BE IT ORDAINED by the Mayor and Winston-Salem City Council that Chapters 2, 18 and 38 are hereby amended to read as follows:

Section 1. Section 2-63 is hereby amended by removing from the list of public bodies “Emergency management advisory council” and substituting in lieu thereof the “Forsyth County Local Emergency Planning Committee”.

Section 2. The existing Chapter 18 entitled “Civil Defense” is hereby rewritten in its entirety and replaced with the following new articles to read as follows:

“Article 1. Emergency Management.

Sec. 18-1. Emergency management organization.

There shall be a joint city/county office of emergency management. This office shall serve as the emergency management agency for purposes of Chapter 166A of the North Carolina General Statutes and said office shall operate in accordance with joint resolutions adopted by the city council and the board of county commissioners, and in accordance with applicable state law.

~~Sec. 18-2. Purpose of chapter.~~

~~The city/county office of emergency management coordinates the response of governmental agencies and others to natural, manmade and nuclear disasters. In addition, the office outlines and implements standard emergency response procedures to minimize injury and property damage caused by such disasters. As a result, the office finds it necessary to recover the cost of equipment and materials utilized in such effort.~~

~~Sec. 18-3. Definitions.~~

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

~~*Having control* means, but is not limited to, any person using, transferring, storing or transporting a hazardous material onto the land or into the air or the waters of the city.~~

~~*Hazardous material* means any substance which, when discharged in any quantity, may present an imminent and substantial danger to the public health or welfare or to the environment.~~

~~Hazardous material response means the sending of equipment, resources and materials to abate hazardous materials, which endanger the health or safety of persons or the environment.~~

~~Person includes individuals, firms, partnerships, associations, institutions, corporations, local governments and governmental agencies.~~

~~Sec. 18-4. Financial responsibility for emergencies involving hazardous materials.~~

~~(a) Generally; billing and collection of costs. The spilling of hazardous materials is dangerous and prejudicial to public health and safety and shall constitute a nuisance under G.S. 160A-193. The property owner or the person exercising or having control over the hazardous materials that created the emergency and nuisance shall be financially responsible for any expense incurred by the city during the abatement, containment and control of the hazardous materials. The city/county office of emergency management shall be responsible for billing and collecting from the owner or other persons all such costs of equipment and materials associated with a hazardous materials response by the office of emergency management.~~

~~(b) Lien for payment of charges. Failure of the person in default to pay the charges assessed shall give the city the right to levy a lien upon the land or the premises where the hazardous material response arose. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes. The expense of the action is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. The additional lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection, as it relates to the additional lien, shall not apply if the person in default can show that the nuisance was created solely by the actions of another.~~

Sec. 18-2. Purpose of chapter.

(a) The city/county office of emergency management (“emergency management agency”) coordinates the response of governmental agencies and others to natural, manmade and nuclear disasters to ensure the complete and efficient utilization of all resources of the county and its municipalities in the event of an emergency or disaster. In addition, the agency outlines and implements standard emergency response procedures to minimize injury and property damage caused by such disasters. As a result, the agency may find it necessary to recover the cost of equipment and materials utilized in such effort and hereby has the authority to do so.

(b) The emergency management agency shall serve, as the coordinating entity, for all activities in connection with emergency management within the city of Winston-Salem and Forsyth County and shall serve as the agency through which the Winston-Salem City Council (“city council”) and Forsyth County Board of

Commissioners (“county commissioners”) and, where appropriate, other city (or town) councils within Forsyth County exercise the authority and discharge the responsibilities vested in them during states of disaster or local emergency.

- (c) This chapter does not relieve any city or county department or agency of the responsibilities or authority given to it by state law or by local charter, nor will it adversely affect the work of any volunteer agency organized for relief in disaster situations.
- (d) This chapter shall not abridge or modify the authority of the governor or his or her delegates to implement emergency measures during declared states of disaster.
- (e) The emergency management agency shall serve as the central coordinating agency for activities and programs relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of the city, county and similar agencies and officials of other counties, the state and federal agencies and with other private and quasi-official organizations.

Sec. 18-3. Territorial applicability.

The emergency management agency shall perform emergency management, mitigation, preparedness, disaster response, and recovery functions within the territorial limits of the city of Winston-Salem and Forsyth County including incorporated municipalities pursuant to duly adopted ordinances, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of North Carolina Statutes, mutual aid agreements, and in accordance with State and Forsyth County comprehensive emergency management planning.

Section 18-4. Violations of article.

It shall be unlawful for any person to violate any of the provisions of this article or of the regulations or plans promulgated pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the emergency management forces, as herein defined, in the enforcement of the provisions of this article or any regulations or plan issued thereunder.

Sec. 18-5. Agency structure.

The agency shall consist of the following:

1. A director who shall be recommended by the city manager, appointed by, and responsible to the city council and county commissioners. The director shall be supervised by the city manager and may be disciplined or terminated by recommendation of the city manager upon agreement of the city council and county commissioners;

2. Such other employees as the city deems necessary pursuant to the interlocal agreement between the city and county;
3. Such other relevant city and county departments, as deemed necessary by the city or county; and
4. Volunteer personnel and agencies offering services to and accepted by the city or county, where appropriate.

Sec. 18-6. Duties and responsibilities of the director.

(a) The director shall be responsible for the organization, administration and operation of the emergency management agency, subject to the direction and control by the city manager or his designee and the city council and county commissioners. The director shall coordinate the activities, services and programs for emergency management and disaster response within the city limits and Forsyth County and shall maintain liaison with the state and federal authorities and the authorities of pertinent political subdivisions to insure the most effective operation and implementation of the emergency management plans.

(b) The director's duties shall include, but not be limited to the following:

(1) Manage a comprehensive emergency management program for the city of Winston-Salem and Forsyth County pursuant to N.C.G.S. 166A, including, but not limited to elements addressing mitigation activities, preparedness, responses to disasters and emergencies, and recovery operations.

(2) Compel and coordinate the activity of all other public and private agencies engaged in any emergency management activities within the county and its municipalities.

(3) Through public informational programs, educate the populace as to actions necessary and required for the protection of persons and property in case of enemy attack, terrorism, or disaster, either impending or present.

(4) Manage exercises to insure the efficient operation of the emergency management forces and to familiarize residents and partner agencies with emergency management regulations, procedures, and operations.

(5) Monitor and advise the city and county managers, and where appropriate other city and county officials, of any and all threats, emergencies or disasters that pose a risk to the lives and safety of the residents of Winston-Salem and Forsyth County, propose solutions for their decision on how best to protect people and property from imminent danger, or from further damage.

(6) Procure supplies and equipment, institute training programs, public preparedness information and education programs, manage and coordinate

disaster drills and exercises in accordance with the city and county-wide emergency plans.

(7) Enter into mutual aid agreements in collaboration with other public and private agencies within the state for reciprocal disaster aid and assistance in the event of a disaster or emergency that is too great a magnitude to be dealt with unassisted.

(8) Manage the Winston-Salem/Forsyth County Emergency Operations Center as the central coordinating entity during major emergencies or disasters.

Sec. 18-7. Emergency management plans.

(a) A city and countywide, all-hazard, emergency operations plan shall be adopted and maintained by resolution of the city council and county commissioners. In the preparation of this plan, the services, equipment, facilities and personnel of all existing departments and agencies shall be used fully. When the plan is approved, each department or agency shall perform those functions assigned to it by the plan and shall maintain a current state of readiness at all times. The emergency operations plan shall have the full effect of local law whenever an emergency or disaster occurs.

(b) Supporting plans shall be maintained by the emergency management agency to ensure coordinated activities in the mitigation, preparedness, response, and recovery phases of emergency management. In the preparation of these plans, the services, equipment, facilities and personnel of all existing departments and agencies shall be used fully. When the plans are published, each department or agency shall perform those functions assigned to it by the plans.

(c) The emergency management agency shall describe in emergency plans those positions within the disaster organization, in addition to the agency head, for which lines of succession are necessary. In each instance, the responsible person shall designate and file with the emergency management agency a current list of three persons to be successors to each key position. The list shall be in order of succession and shall designate persons most capable of carrying out all duties and functions assigned to the position.

(d) Each department designated in emergency plans shall be responsible for carrying out all designated duties and functions designated by the plan. Duties will include organization and training of assigned employees and volunteers. Each department shall formulate procedures to implement the plan for the organization.

(e) When a skill required for a disaster relief function is not available within local government, the coordinator shall be authorized to seek assistance beyond local government resources.

Sec. 18-8. Planning related to special facilities.

(a) Special facilities are those institutions or organizations whose populations are dependent upon the institution for transportation or care.

(b) Special facilities are required to have a plan in place to be self-sufficient in an emergency that would require evacuation of their facility due to a natural or technological disaster.

(c) These institutions include, but are not limited to, assisted living facilities, hospitals, schools (public and private), day care centers, elderly care centers or other similar organizations.

(d) The institutions shall submit copies of their disaster plan to the emergency management agency for review on a regular basis as defined by the emergency management agency. Such review does not constitute approval of the disaster plan.

Sec. 18-9. City and county departmental continuity plans.

To facilitate emergency preparedness planning for Winston-Salem and Forsyth County, all City and Forsyth County departments, authorities, independent agencies, and constitutional officers shall prepare and periodically revise continuity of operations plans pursuant to directions and guidelines from the emergency management agency. These continuity plans must establish a comprehensive and effective program that maintains the continuity of essential departmental functions during any emergency or other situation that disrupts normal operations. The City and Forsyth County shall ensure that such contingency plans are consistent with other emergency and disaster plans within the City and Forsyth County. The continuity of operations plans shall be submitted, annually, to the emergency management agency by December 31st in an emergency management-approved format and shall address at a minimum the following areas:

1. Assignment of personnel as the continuity of operations program manager;
2. Direction and control including authorities and responsibilities of key personnel, the succession of key departmental leadership, and delegations of authority;
3. Identification of essential and non-essential departmental functions and staffing capabilities required to continue providing essential functions;
4. Activation, mobilization, relocation, alert, notification, and implementation plans for activating the continuity of operations plan;
5. Alternate facility operations;
6. Communications (primary and back-up) systems that will be used to keep employees, on-duty and off-duty, informed of departmental response

activities, to coordinate employees in order to carry out departmental missions, to keep in contact with customers and suppliers, and to coordinate with the City and Forsyth County Emergency Operations Center;

7. Protection of facilities, equipment, supplies, and vital records;
8. Recovery and restoration of services including employee support, critical asset repair/replacement, and the continuity of operations;
9. Administration and logistics.

Section 18-10. Forsyth County Local Emergency Planning Committee.

(a) Purpose. The Forsyth County Local Emergency Planning Committee, established pursuant to the United States Environmental Protection Agency's Emergency Planning & Community Right-To-Know Act, shall advise the emergency management agency regarding community emergency preparedness activities, including training exercises, identifying hazards, and emergency response resources.

(b) Membership and appointments. The Forsyth County Local Emergency Planning Committee shall include capacity appointments representing elected state and local officials; police, fire, civil defense, and public health professionals; environment, transportation, and hospital officials; facility representatives; and representatives from community groups and the media. The city council and county commission shall each appoint two members respectively to the roster of the Forsyth County Local Emergency Planning Committee.

Section 18-11. Severability.

Should any provisions of this subchapter be declared invalid for any reason, by any court of competent jurisdiction, such declaration of invalidity shall not affect the validity of the provisions or of this subchapter as a whole.

Reserved. Sections 18-12 through and including 18-20.

Section 3. Article II entitled "State of Emergency" of Chapter 18 is hereby created by moving Section 38-2 of the city code to Article II of Chapter 18, renumbering the same as Section 18-21 and amending such to read as follows:

"Article II. State of Emergency.

Sec. 18-21. - Curfew and other restrictions authorized during state of emergency.

(a) "State of emergency" defined. A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance or catastrophe, or for any other reason municipal public safety authorities are unable to

maintain public order or afford adequate protection for lives, safety, health, welfare or property.

(b) Proclamation of state of emergency; imposition of curfew. In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order more effectively to protect the lives, safety and property of people within the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city. The mayor may, at any time, amend the proclamation, as the mayor deems appropriate.

(c) Limitation of application of curfew. The mayor is hereby authorized and empowered to limit the application of such a curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the city.

(d) Termination of state of emergency. The mayor shall proclaim, in writing, the end of such state of emergency and curfew as soon as circumstances warrant or when directed to do so by the city council.

(e) Meeting of city council. If desired, the city council may call an emergency or special meeting after a state of emergency has been proclaimed by the mayor.

(f) Prohibition of certain activities. During the existence of a proclaimed state of emergency, the mayor may prohibit by proclamation any or all of the following activities:

(1) Possessing off one's own premises, buying, selling, giving away, or otherwise transferring or disposing of any explosives, firearms, ammunition or blasting caps, or any dangerous weapons of any kind;

(2) Selling beer, wines or intoxicating beverages of any kind, or possessing or consuming beer, wines or intoxicating beverages off one's own premises;

(3) Organizing or conducting any demonstration, parade, march, vigil or participation therein from taking place on any of the public transportation ways or upon any public property;

(4) Buying, selling, giving away or otherwise transferring gasoline, kerosene or any other similar petroleum products or any other combustible or inflammatory substance, except as expressly authorized by the provisions of the proclamation;

(5) Being or travelling upon any public transportation ways or upon public property, unless such travel is necessary to obtain medical assistance; or

(6) Participating or carrying on any business activity, or keeping open places of business or entertainment and any other place of public assembly.

(g) Applicability of restrictions during curfew. Upon imposition of a curfew by the mayor under subsection (c) of this section, the provisions contained in subsection (f) of this section shall apply automatically unless specifically exempted.

(h) Imposition of restrictions in area not subject to curfew. Nothing in this section shall be construed to limit the mayor's ability to impose any or all of the restrictions outlined in subsection (f) of this section on areas of the city not subject to curfew as outlined in subsection (c) of this section.

(i) Authority of mayor to impose other restrictions. The mayor is further authorized to proclaim any other restrictions or controls not specifically enumerated in this section as may be reasonably necessary to maintain order and protect lives or property.

(j) Evacuation. The mayor may direct and compel the voluntary or mandatory evacuation of all or part of the population of the city; to prescribe routes, modes of transportation and destination in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area and the occupancy of premises therein. Details of the evacuation may be set forth or amended in any subsequent proclamation, which shall be publicized.

(k) Absence of the mayor. In the absence of the mayor, the mayor pro tempore may exercise the duties and responsibilities set forth herein.

(l) Violations of this article. Any person violating any prohibition or restriction imposed by a proclamation authorized by this article shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding \$500.00 and/or imprisonment not exceeding 30 days, as provided by G.S. 14-4.

(m) Territorial applicability. This article shall not apply within the corporate limits of any municipality or within the area of the county over which the municipality has jurisdiction to enact general police power ordinances unless the municipality by resolution consents to this application or the mayor of the municipality has requested its application.”

Reserved. Sections 18-22 through and including 18-25 is hereby reserved.

Section 4. Article III entitled “Financial responsibility for emergencies involving hazardous materials.” of Chapter 18 is hereby created to read as follow:

“Article III. Financial responsibility for emergencies involving hazardous materials.

Sec. 18-26. Definitions.

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

Having control means, but is not limited to, any person using, transferring, storing or transporting a hazardous material onto the land or into the air or the waters of the city.

Hazardous material means any substance which, when discharged in any quantity, may present an imminent and substantial danger to the public health or welfare or to the environment.

Hazardous material response means the sending of equipment, resources and materials to abate hazardous materials, which endanger the health or safety of persons or the environment.

Person includes individuals, firms, partnerships, associations, institutions, corporations, local governments and governmental agencies.

Sec. 18-27. Financial responsibility.

(a) Billing and collection of costs. The spilling of hazardous materials is dangerous and prejudicial to public health and safety and shall constitute a nuisance under G.S. 160A-193. The property owner or the person exercising or having control over the hazardous materials that created the emergency and nuisance shall be financially responsible for any expense incurred by the city during the abatement, containment and control of the hazardous materials. The city/county office of emergency management shall be responsible for billing and collecting from the owner or other persons all such costs of equipment and materials associated with a hazardous materials response by the office of emergency management.

(b) Lien for payment of charges. Failure of the person in default to pay the charges assessed shall give the city the right to levy a lien upon the land or the premises where the hazardous material response arose. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes. The expense of the action is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. The additional lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection, as it relates to the additional lien, shall not apply if the person in default can show that the nuisance was created solely by the actions of another.”

Section 5. Section 38-2 of Chapter 38 entitled “Curfew and other restrictions authorized during state of emergency.” is hereby deleted and said section is reserved for future use.

~~“Sec. 38 2. Curfew and other restrictions authorized during state of emergency.~~

- (a) ~~"State of emergency" defined.~~ A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance or catastrophe, or for any other reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, health, welfare or property.
- (b) ~~Proclamation of state of emergency; imposition of curfew.~~ In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order more effectively to protect the lives, safety and property of people within the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.
- (c) ~~Limitation of application of curfew.~~ The mayor is hereby authorized and empowered to limit the application of such a curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the city.
- (d) ~~Termination of state of emergency.~~ The mayor shall proclaim the end of such state of emergency and curfew as soon as circumstances warrant or when directed to do so by the city council.
- (e) ~~Meeting of city council.~~ The city council shall be called into session within 24 hours after a state of emergency has been proclaimed by the mayor.
- (f) ~~Prohibition of certain activities.~~ During the existence of a proclaimed state of emergency, the mayor may prohibit by proclamation any or all of the following activities:
- (1) ~~Possessing off one's own premises, buying, selling, giving away, or otherwise transferring or disposing of any explosives, firearms, ammunition or blasting caps, or any dangerous weapons of any kind;~~
 - (2) ~~Selling beer, wines or intoxicating beverages of any kind, or possessing or consuming beer, wines or intoxicating beverages off one's own premises;~~
 - (3) ~~Organizing or conducting any demonstration, parade, march, vigil or participation therein from taking place on any of the public ways or upon any public property;~~
 - (4) ~~Buying, selling, giving away or otherwise transferring gasoline, kerosene or any other similar petroleum products or any other combustible or inflammatory substance, except as expressly authorized by the provisions of the proclamation;~~

~~(5) Being or travelling upon any street, alley or roadway or upon public property, unless such travel is necessary to obtain medical assistance; or~~

~~(6) Participating or carrying on any business activity, or keeping open places of business or entertainment and any other place of public assembly.~~

~~(g) *Applicability of restrictions during curfew.* Upon imposition of a curfew by the mayor under subsection (e) of this section, the provisions contained in subsection (f) of this section shall apply automatically unless specifically exempted.~~

~~(h) *Imposition of restrictions in area not subject to curfew.* Nothing in this section shall be construed to limit the mayor's ability to impose any or all of the restrictions outlined in subsection (f) of this section on areas of the city not subject to curfew as outlined in subsection (e) of this section.~~

~~(i) *Authority of mayor to impose other restrictions.* The mayor is further authorized to proclaim any other restrictions or controls not specifically enumerated in this section as may be reasonably necessary to maintain order and protect lives or property.”~~

Section 6. The ordinance shall become effective upon adoption.