

Regular Session, August 20, 2012, 7:00 p.m.  
Catawba County Board of Commissioners

**Ordinance**

Amendment to Code – Chapter 34 – Streets, Sidewalks and Other Public Places –  
Article II – Public Use of Count Grounds for Assembly 602 08/20/12

**Policies**

Public Use of Meeting Rooms and the 1924 Courthouse 602 08/20/12

The Catawba County Board of Commissioners met in regular session on Monday, August 20, 2012 at 7:00 p.m. in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Lynn M. Lail and Commissioners Dan A. Hunsucker, Barbara G. Beatty and Randy Isenhower.

Also present were County Manager J. Thomas Lundy, Assistant County Managers Dewey Harris and Mary Furtado, County Attorney Debra Bechtel and County Clerk Barbara Morris.

1. Chair Katherine W. Barnes called the meeting to order 7:00 p.m.
2. Chair Barnes led the Pledge of Allegiance to the Flag.
3. Vice-Chair Lynn M. Lail offered the invocation.
4. Commissioner Dan Hunsucker made a motion to approve the minutes of the Board's Regular Meeting of August 6, 2012. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed everyone present and recognized Commissioner candidate Steve Hunt and noted Commissioners Hunsucker and Beatty were also up from re-election. She then recognized Boy Scout John Johnson from Troop 327 from Mt. Pleasant United Methodist Church in Sherrills Ford. Scout Johnson was working on his Communications and Citizenship in the Community badges.
6. Public Comments for Items Not on the Agenda: None.
7. Appointments: None.
8. Departmental Report:  
Legal:
  1. County Attorney Debra Bechtel presented a request for the Board to consider an amendment to the Catawba County Code of Ordinances, Chapter 34 - Streets, Sidewalks and Other Public Places, which would adopt an entirely new Article II – Public Use of County Grounds for Assembly. She also asked the Board to consider the adoption of a County Policy for the Public Use of Meeting Rooms and the 1924 Courthouse.

On or about May 24, 2012, a group of citizens filed an application requesting to assemble on County-owned property pursuant to Chapter 34, Article II of the Catawba County Code of Ordinances. An issue arose with respect to the constitutionality of certain sections of the Code. Historically, groups requesting use of County grounds or meeting rooms were not focused primarily on the expression of free speech, but instead were holding civic, cultural and historic events. The group in May 2012 was assembling for purposes of expressing free speech. In deciding a number of cases related to the expression of free speech, the U.S. Supreme Court established precedent which precludes an entity from requiring a 14-day advance notice, which the County's ordinance previously did.

The revised ordinance focuses on assembly for purposes of expressing constitutionally protected speech. In a separate policy, the use of meeting rooms and the 1924 Courthouse grounds is addressed. The revised

ordinance provides definitions, establishes standards of conduct for assemblies, and describes prohibited activities on public property.

The intent of the ordinance is to protect assemblers who are expressing constitutionally protected speech and the safety of the public, and to protect public facilities and grounds.

Provisions of the new ordinance include, but were not limited to, the following:

- 1) A set of definitions of words used in the Article, including "Assemble or assembling", "camp or camping", "dangerous weapon", "noxious substance", "obstruct", "obstruction object of instrument", "sidewalk" and "temporary shelter".
- 2) There are separate applications; one for groups of 25 or more wishing to assemble for the purpose of expressing constitutionally protected speech, and another for groups wishing to use County meetings rooms or the 1924 Courthouse grounds for civic, cultural and historical events.

The new assembly application requires the name of the organization or group proposing to assemble; the name of the individual submitting the application; name, phone number and address of the individual who will be responsible for carrying the permit; the location or locations on County property where the assemblers propose to assemble; the date on which the assembly is to occur, including starting and ending times; and the anticipated number of participants. Permitted locations include the lawns of the Justice Center, Government Center, 1924 Courthouse, Social Services and Public Health. The person in charge of the assembly is required to carry the permit during the assembly.

3) Standards of Conduct specify areas where people may assemble and park, and what they may carry.

4) There are prohibited activities on County grounds. Some of the prohibited activities include camping; the setting of fires; obstructing public roads, sidewalks, and entrances to public buildings; attaching anything to buildings, vehicles, utility poles, trees, etc.; projecting a noxious substance; or possessing a firearm or dangerous weapon of any kind while participating in or present at any assembly.

The new policy regarding the use of meeting rooms and the 1924 Courthouse grounds for non-profit educational, civic, cultural and historical events require an application be filed 14 days in advance. Prohibitions include loud or disruptive behavior, obstruction of the flow of traffic, fires and weapons, attached signs or decorations, and eating or drinking in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse. Groups will be responsible for disposal of trash and must recycle. A deposit fee of \$100 is required at the time of application for meeting rooms, which would be returned when the key to the room is returned, provided that no cleaning is required.

Commissioner Beatty asked if applicants could be required to obtain insurance for use of the facilities. County Attorney Bechtel advised that this could not be required as it would inhibit the speed of approval and the use of the facilities. Chair Barnes and Vice-Chair Lail complimented County Attorney Bechtel on the thoroughness of research of this amendment. Vice-Chair Lail made a motion to adopt both the amendment to the Ordinance and the Policy. The motion carried unanimously. The following ordinance and policy apply:

**Ordinance No. 2012-12**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS**, that the Catawba County Code of Ordinances, Chapter 34 – Streets, Sidewalks and Other Public Places, Article II – Public Use of County Grounds for Assembly, be amended in its entirety as follows:

**ARTICLE II. – PUBLIC USE OF COUNTY GROUNDS FOR ASSEMBLY**

**Sec. 34-26. General Policy Statement.**

Certain County facility grounds may be reserved for a public assembly provided certain conditions are met. The requirements contained within this article are to protect the safety of citizens and visitors, as well as to safeguard County property.

**Sec. 34-27. Assembly.**

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

(1) *Assemble or assembling* means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive, so long as the conduct does not violate the law.

(2) *Camp or camping* means the use of County property for living accommodation purposes such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or placing any tents or a temporary shelter on County property for living accommodation purposes.

(3) *Dangerous weapon* means any device or substance designed or capable of being used to inflict serious injury to any person or property; including, but not limited to: firearms, air guns, BB guns, pellet guns, knives or razors with a blade more than three (3) inches in length, metallic knuckles, clubs, blackjacks, nightsticks, dynamite cartridges, bombs, grenades, explosives, Molotov cocktails, and sword canes.

(4) *Noxious substance* means any substance that is harmful, destructive, foul, or offensive to human beings, such as but not limited to garbage, trash, refuse, animal parts or fluids, manure, urine, feces or other organic waste by-products.

(5) *Obstruct* means to interfere with pedestrian or vehicular movement on a public road way, public sidewalk, public right-of-way, entrance or exit to private property, or any other area open to the public.

(6) *Obstruction object or instrument* means a device commonly known as a "lock box" or "sleeping dragon" or any of the components of such a device including but not limited to: pipes, tubes, wire handcuffs, chains, carabineers, padlocks, or containers either weighted or not.

(7) *Sidewalk* means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights of way.

(8) *Temporary shelter* means tents, tarps, or any type of structure or cover that provides partial shelter from the elements.

(b) *Application for Permit to Assemble.* The requirements for a Permit to Assemble are as follows:

(1) A group of twenty-five (25) or more persons must submit to the County Manager an Application for Permit to Assemble. The application must contain the following information:

(a) The name of the organization or group sponsoring or proposing to assemble;

(b) The name of the individual submitting the application;

(c) The name, phone number and address of the individual who will be responsible for carrying the permit as required in Section 34-27(b)(3) below;

(d) The location or locations on County property where the assemblers propose to assemble. Permitted locations include the lawns of the Justice Center, Government Center, 1924 Courthouse, Social Services and Public Health;

(e) The date on which the assembly is to occur, including starting and ending times; and

(f) The anticipated number of participants.

- (2) Upon receipt of a completed, valid application, the County Manager shall approve the application.
  - (3) The person in charge of the assembly shall carry the permit at all times and shall present it when so requested.
- (c) *Standards of Conduct for Assemblies.* Assemblies held on public property must abide by the following standards of conduct:
- (1) Assemblies are restricted to the use of the grassy areas and cannot at any time nor in any way obstruct, interfere with, or block the following: persons entering or exiting from vehicles; persons crossing streets or otherwise using the public way; the entrance or exit to any building or access to property abutting the street or sidewalk; emergency personnel in the performance of their duties; or pedestrian or vehicular traffic. Assemblies shall not be conducted on any public roadway used primarily for vehicular traffic, nor interfere with the business of the County or State. Parking must be in designated parking spaces.
  - (2) Assemblers may carry written or printed placards or signs not exceeding thirty-six (36) inches provided the words used would not tend to incite violence. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.
  - (3) If more than one group of assemblers desires to assemble at the same time at or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to assemble in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of assemblers applied first and at the discretion of law enforcement.
  - (4) Spectators of assemblies shall not physically interfere with individuals engaged in assembling. Assemblers and spectators of assemblies shall not speak fighting words or threats that would tend to provoke a reasonable person to a breach of the peace.
  - (5) Parking is restricted to designated parking spaces.
  - (6) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with NCGS 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.
- (d) *Prohibited activities on public property.* The following activities are prohibited on public property:
- (1) It shall be unlawful for anyone to camp on any public property owned by the County including public rights-of-way and sidewalks. Camping is deemed a public nuisance and the County may summarily remove a temporary shelter, bedding or personal belongings.
  - (2) It shall be unlawful to light or use a campfire or bonfire on public property, unless otherwise permitted.
  - (3) It shall be unlawful for any person, other than governmental employees or its agents in the performance of their duties, to possess any obstruction object or instrument with the intent to obstruct on a public road, public sidewalk, public right-of-way, entrance or exit to private property or any other area open to the public.
  - (4) It shall be unlawful for any person, other than governmental employees in the performance of their duty, to attach themselves to another person, building, vehicle or fixture with the intent to obstruct pedestrian or vehicular movement on a public road, public sidewalk, public right-of-way, entrance or exit to private property or any other area open to the public.

(5) It shall be unlawful to hang, fasten, or attach any rope, wire, chain, sign, banner, or electrical device or power cord to any public or private property including buildings, bridges, overpasses, vehicles, construction equipment, memorials, utility poles, trees or artwork unless express permission has been granted by the owner or manager of the property.

(6) It shall be unlawful for any person to possess, throw, emit, cause to be used as a projectile, or otherwise disperse any noxious substance with the intent to use the noxious substance to interfere with a lawful assembly or to interfere with emergency services or to interfere with a person's right of entry or right to leave a place.

(7) No person observing, engaging in or assisting in assembling shall bring to or allow to remain in the immediate area of assemblies any vicious animal.

(8) It shall be unlawful for any person to possess on or about his person or vehicle any firearm or dangerous weapon of any kind, whether exposed or concealed, while participating in or present at any assembly. This section shall not apply to the following persons while acting lawfully and within the scope of their duties and authority:

- (1) Law enforcement officers and
- (2) Officers and soldiers of the armed forces, militia and National Guard.

(e) *Law enforcement lines and barricades.* Law enforcement officers are authorized to establish law enforcement lines and barricades to preserve the public peace, arrest offenders and to protect the rights of persons and property. It shall be unlawful for anyone to intentionally cross over a law enforcement line or barricade.

(f) *Penalty.* Any person who fails or refuses to abide by or otherwise violates this article shall be subject to the following sanctions or penalties:

(a) The County Manager or agent may revoke any permit granted under this section if any participant in an assembly fails to comply with the requirements of this Article.

(b) Any violation of any part of this article shall subject the violator to the penalties as set forth in [section 1-14](#) of this Code.

This the 20<sup>th</sup> day of August, 2012.

#### **Policy for the Public Use of Meeting Rooms and 1924 Courthouse Grounds.**

(a) The County Manager or a designated agent is authorized to approve or deny an application for permission to use a County meeting room or the 1924 Courthouse grounds. The County Manager may deny an application when the proposed use or activity would be inconsistent with the purpose for which the facility has been established or designated. Applications for consecutive or regular meetings or events will not be approved.

(b) Completed applications must be received in the County Manager's office at least fourteen (14) days prior to the date of the proposed use.

(c) The applicant requesting the use of a County meeting room or the 1924 Courthouse grounds must be a resident of Catawba County and at least 18 years of age. Only nonprofit, educational, civic, cultural, and historical groups will be considered.

(d) The applicant is responsible and may be liable for any and all damages proximately caused to any facility.

(e) The following are prohibited:

1. Loud or disruptive behavior.
2. Open, pit, or any type of fires including burning flames such as candles.
3. The carrying, concealed or openly, of any gun, rifle, firearm, knife or other weapon.

4. Signs, decorations or other attachments on any building or permanent structure.
5. Eating or drinking in the Robert E. Hibbitts meeting room in the 1924 Courthouse.
- (f) The County will not provide personnel or equipment.
- (g) All uses must be in compliance with local, state and federal laws.
- (h) Immediately upon the conclusion of the meeting or event, the applicant must properly dispose of all trash and debris and must provide receptacles to recycle aluminum cans, glass, cardboard, plastic or paper.
- (i) Ingress and egress to the facility grounds may not restrict the orderly flow of traffic on adjacent roads and traffic must comply with all local, state and federal laws. Parking must be in designated parking spaces.
- (j) A deposit fee in the amount of \$100.00 must be paid at the time of application for the use of meeting rooms. As long as there is no damage to the property, cleaning is not required and the key is returned, the deposit will be fully refunded.

2. County Attorney Debra Bechtel presented a request for the Board to authorize the Chair to execute a quitclaim deed to Mr. George F. Dagenhart. Mr. Dagenhart acquired property from Mrs. Ethel G. Cochrane in 1956, as evidenced by a warranty deed recorded in Book 532, Page 147, Catawba County Registry. Mr. Dagenhart is now selling the property and, after examining the title, Attorney Robert Mullinax discovered defects in the chain of title. On behalf of Mr. Dagenhart, Mr. Mullinax requested that Catawba County, an adjoining property owner, execute a quitclaim deed to Mr. Dagenhart so that a title insurance company will insure over the defect and Mr. Dagenhart may proceed with the closing.

Catawba County owns approximately 588 acres north of the property in question (the Mountain Creek property acquired from Crescent Resources pursuant to a development agreement). It appears from the public record that Catawba County does not have an ownership interest in any portion of the property Mr. Dagenhart claims and intends to sell. It is advantageous to the property owners, including the County, to establish a clear boundary line, and the quitclaim deed will help accomplish that.

Commissioner Randy Isenhower indicated he needed to recuse himself from voting on this matter as he had a client who was interested in purchasing the property at issue. County Attorney Bechtel recommended this recusal. Commissioner Hunsucker made a motion to recuse Commissioner Isenhower from the vote. The motion carried unanimously. Commissioner Beatty made a motion to authorize the Chair to execute the quitclaim deed. The motion carried unanimously by members who were not recused from the vote.

9. Other Items of Business: Chair Barnes complimented members of the Catawba County Youth Council who made presentations at the North Carolina Association of County Commissioners Annual Meeting.
10. Attorney's Report: None.
11. Manager's Report: None.
12. Adjournment. The meeting adjourned at 7:15 p.m.

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Katherine W. Barnes, Chair  
Catawba County Board of Commissioners

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Barbara E. Morris  
County Clerk