

ARTICLE XI. - PROSTITUTION-EXCLUSION ZONES

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Sec. 15-253. - 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:

Appeals official means the city manager, or his designee.

Arrest means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense.

Conviction means an adjudication of guilt following a trial or a plea of guilty or no contest in a criminal case.

Essential needs mean food, physical care, and medical attention.

Prostitution-exclusion zone means an area of the city as designated by city council under this article, which is an area where the number of arrests for any of the offenses enumerated in section 15-255 for the preceding 12-month period is significantly higher than that for other similarly sized geographic areas of the city that are not located within a prostitution-exclusion zone.

Right-of-way means the area on a public roadway, highway, street, bicycle lane, or sidewalk, and associated adjacent land, in which the city has a property interest, whether by easement or fee and regardless of how acquired or established, for public travel purposes.

Travel means the movement on foot or within a vehicle within a prostitution-exclusion zone from one point to another without delay other than to obey traffic control devices.

(Ord. No. 2913, § 1, 2-28-2005)

Sec. 15-254. - Designation of prostitution-exclusion zones.

(a)

If the city council designates an area as a prostitution-exclusion zone, council shall do so by ordinance. The designation shall be valid for a period of three years and three months.

(b)

The chief of police of the Charlotte-Mecklenburg Police Department is directed to report to city council at least 90 days before the end of the three year and three month period, as to whether there is a need to reauthorize or reconfigure the prostitution-exclusion zones enumerated in section 15-260.

(Ord. No. 2913, § 1, 2-28-2005)

Sec. 15-255. - Civil exclusions.

(a)

A person is subject to exclusion for a period of 90 days from any public right-of-way within a prostitution-exclusion zone if that person has been arrested and a magistrate has issued a magistrate's order, pursuant to G.S. 15A-511(c), based upon probable cause to believe that the person has committed any of the following offenses within that prostitution-exclusion zone, unless the offense was committed entirely within a private residence:

(1)

Maintain or operate a conveyance for the purpose of prostitution or assignation, in violation of G.S. 14-204(1);

- (2) Occupy a conveyance or permit a conveyance to be used for the purpose of prostitution or assignation, in violation of G.S. 14-204(2);
- (3) Receive, offer or agree to receive any person into a conveyance for the purpose of prostitution or assignation, in violation of G.S. 14-204(3);
- (4) Direct, take or transport, or offer or agree to take or transport any person to any place, structure, or building or to any other person, with knowledge or reasonable cause to know that the purpose of such directing, taking, or transporting is prostitution or assignation, in violation of G.S. 14-204(4);
- (5) Procure or solicit, or offer to procure or solicit for the purpose of prostitution or assignation, in violation of G.S. 14-204(5);
- (6) Enter or remain in any conveyance for the purpose of prostitution or assignation, in violation of G.S. 14-204(6);
- (7) Engage in prostitution or assignation, or aid or abet prostitution or assignation, in violation of G.S. 14-204(7);
- (8) Loitering for the purpose of engaging in prostitution or crime against nature, in violation of G.S. 14-204.1;
- (9) Crime against nature, in violation of G.S. 14-177; or
- (10) Soliciting crime against nature, in violation of G.S. 14-177 and the common law of the state.

The aforesaid 90-day exclusion will cease immediately if the person arrested or otherwise taken into custody for the offenses listed above is subsequently acquitted of the charge(s) or said charge(s) is/are dismissed.

- (b) A one-year exclusion from any public right-of-way within a prostitution-exclusion zone shall take effect upon the date of conviction for any of the offenses enumerated in subsection (a) if that offense was committed within that prostitution-exclusion zone. The fact that a conviction is being appealed shall not stay the exclusion.
- (c) A one-year exclusion from any public right-of-way within a prostitution-exclusion zone shall be a condition of deferred prosecution for any person entering the deferred prosecution program of the division of community corrections for any of the offenses enumerated in subsection (a) if that offense was committed within that prostitution-exclusion zone. There shall be no right of appeal from the issuance of such an exclusion.
- (d) Except as allowed under subsection 15-258(c), a person excluded from a prostitution-exclusion zone under authority of this section may not enter that prostitution-exclusion zone except to:
 - (1) Attend a meeting with an attorney;
 - (2) Attend a scheduled initial interview with a social service provider;
 - (3) Comply with court- or corrections-ordered obligations;
 - (4) Contact criminal justice personnel at a criminal justice facility;
 - (5) Attend any administrative or judicial hearing relating to an appeal of:
 - a. The person's notice of exclusion; or
 - b. The denial, revocation, or amendment of the person's variance;
 - (6) Travel through that prostitution-exclusion zone on a public transportation vehicle; or
 - (7) Travel through that prostitution-exclusion zone on the I-77, I-277, I-85 or I-485 freeways within its boundaries.
- (e) While in a prostitution-exclusion zone, a person who is otherwise excluded may travel only directly to and from the obligations enumerated in subsection (d).
- (f) If an excluded person is in the prostitution-exclusion zone from which that person is excluded, in violation of the exclusion during the exclusion period, that person is subject to arrest for second degree trespass pursuant to G.S. 14-159.13.

Sec. 15-256. - Issuance of exclusion notices.

The chief of police and his designees are the persons in charge of the public rights-of-way in the prostitution-exclusion zones for purposes of issuing notices of exclusion in accordance with this article.

(Ord. No. 2913, § 1, 2-28-2005)

Sec. 15-257. - Procedure.

(a)

If a person is arrested and a magistrate has issued a magistrate's order, pursuant to G.S. 15A-511(c), based upon probable cause to believe that the person has committed any of the offenses enumerated in subsection 15-255(a) within a prostitution-exclusion zone, the chief of police or his designees shall exclude that person from that prostitution-exclusion zone. Every person excluded shall be provided a notice of exclusion and variances.

(b)

At the time a person is issued a notice of exclusion from a prostitution-exclusion zone, the chief of police or his designees shall issue those variances described in subsections 15-258(c)(2) through (6), and may do a preliminary review with the excluded person of the need for an additional variance and may issue a general variance pursuant to the process described in subsection 15-258(c).

(c)

The notice of exclusion shall be in writing and a copy delivered to the excluded person. The notice of exclusion shall specify the following:

(1)

The area designated as a prostitution-exclusion zone in section 15-260 from which that person is excluded; and

(2)

Information concerning the right to appeal the exclusion to the appeals official.

(Ord. No. 2913, § 1, 2-28-2005)

Sec. 15-258. - Appeal and variances.

(a)

Appeal of notice of exclusion, denial of variance, denial of amendment to variance, and revocation of variance. A person to whom a notice of exclusion is issued, whose request for a variance or an amendment to a variance is denied, or whose variance is revoked, shall have a right to appeal as follows:

(1)

Appeals shall be made to the appeals official.

(2)

Copies of documents in the city's control which are intended to be used at the hearing shall be made available, upon request, to the appellant.

(3)

An appeal of a 90-day notice of exclusion must be filed, in writing, within five calendar days following issuance of the notice of exclusion.

(4)

An appeal of a one-year conviction-based exclusion must be filed, in writing, within five calendar days following the date of conviction.

(5)

An appeal of:

a.

A denial of a request for a variance; or

b.

A denial of a request for an amendment to a variance; or

c.

A revocation of a variance must be filed, in writing, within five calendar days following the action regarding the variance.

(6)

Within five business days after the receipt of the appeal, or such longer period of time as agreed to by the appellant, the appeals official shall hold a quasi-judicial hearing on an appeal and shall render a decision on the appeal at the conclusion of the hearing. The decision of the appeals official shall be based solely on the criteria set forth in this section.

(7)

A 90-day exclusion shall not take effect during the time that an appeal of the 90-day exclusion is pending. If no appeal is taken, the initial 90-day exclusion shall take effect at 12:01 a.m. on the sixth calendar day following the issuance of

the notice of exclusion.

(8)

A one-year conviction-based exclusion shall take effect at 12:01 a.m. on the calendar day following the date of conviction and, notwithstanding an appeal of the exclusion, shall remain in effect unless the appeals official issues a contrary decision.

(9)

At the hearing on an appeal of a 90-day exclusion, the city shall have the burden to show by a preponderance of the evidence that the appellant committed any of the offenses enumerated in subsection 15-255(a), and that the conduct supporting the exclusion occurred within a prostitution-exclusion zone.

(10)

At the hearing on an appeal of a one year conviction-based exclusion, the city shall have the burden to show by a preponderance of the evidence that the appellant committed any of the offenses enumerated in subsection 15-255(a), and that the conduct supporting the exclusion occurred within a prostitution-exclusion zone.

(11)

At the hearing on an appeal of a denial of a request for a variance provided in subsection 15-258(a)(5)a., the city shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this section.

(12)

At the hearing on an appeal of a denial of a request for an amendment to a variance provided in subsection 15-258(a)(5)b., the city shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this section.

(13)

At the hearing on an appeal of a revocation of a variance provided in subsection 15-258(a)(5)c., the city shall have the burden to show by a preponderance of the evidence that any of the conditions enumerated in this section supporting revocation existed at the time of revocation.

(14)

At the hearing on an appeal of a 90-day exclusion, the following shall be prima facie evidence that the exclusion was based on probable cause to believe that the appellant committed any of the offenses enumerated in subsection 15-255(a):

a.

A determination by a judicial official having jurisdiction over the offense that forms the basis for the exclusion, that probable cause existed to arrest the person to whom the initial 90-day notice of exclusion was issued for violation of any of the offenses enumerated in subsection 15-255(a); or

b.

Criminal process charging the person to whom a 90-day notice of exclusion was issued, for violation of any of the offenses enumerated in subsection 15-255(a).

(15)

At the hearing on an appeal of a one year conviction-based exclusion, a judgment of conviction for any of the offenses that formed the basis for the exclusion, as enumerated in subsection 15-255(a), shall be conclusive evidence that the described conduct occurred.

(b)

Review of decision of appeals official. The decision of the appeals official is subject to review in the superior court of the county by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after the appellant has received notice of the decision. Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five business days after the petitioner requests such a stipulation. The city shall transmit the record to the court no later than five business days after receiving the order allowing certiorari. Notwithstanding the provisions of any local rule of the reviewing court that allows for a longer time period, the city shall file its brief within 15 days after it is served with the petitioner's brief. If the petitioner serves his brief by mail, the city shall add three days to this time limit, in accordance with G.S. 1A-1, rule 5. If the local rule is subsequently amended to provide for a shorter time period for the filing of any brief, then the shorter time period shall control. The North Carolina Rules of Appellate Procedure shall govern an appeal by an appellant from the superior court of the county.

(c)

Variances. Variances shall be granted, denied, amended, or revoked in accordance with the following provisions:

All variances shall be in writing, for a specific period and only to accommodate a specific purpose, all of which shall be stated on the variance.

The purpose of the variance is to allow only travel to and from locations within a prostitution-exclusion zone according to the terms of the variance. The variance must be carried on the person while in a prostitution-exclusion zone in order to be effective and must be presented to a Charlotte-Mecklenburg Police Department officer upon request.

An excluded person shall make a request for a variance during regular business hours at the Charlotte-Mecklenburg Police Department division office that was responsible for the arrest that resulted in the exclusion or at the main headquarters building.

(1)

General variance. The chief of police or his designees may, for any reason, grant an excluded person a variance from an exclusion at any time during an exclusion period. Except as described in subsection 15-257(b), an appropriate variance shall be granted to an excluded person who presents a plausible need to engage in any non-criminal activity that is not associated with the behavior supporting the person's exclusion. A variance granted under this subparagraph allows travel within the prostitution-exclusion zone only in accordance with the terms specified in the

variance.

(2)

Residential variance. The chief of police or his designees shall grant a residential variance to an excluded person. A residential variance allows travel within the prostitution-exclusion zone directly to or from the person's residence.

(3)

Essential needs variance. The chief of police or his designees shall grant an essential needs variance to an excluded person. An essential needs variance allows travel within the prostitution-exclusion zone in accordance with the terms of the variance:

a.

To access a public or private place within the prostitution-exclusion zone that provides an essential need;

b.

When the essential need sought by the excluded person cannot reasonably be accessed by the excluded person without entering the prostitution-exclusion zone.

(4)

Employment variance. The chief of police or his designees shall grant an employment variance to an excluded person. An employment variance allows an excluded person to travel to, from or for work within the prostitution-exclusion zone in accordance with the terms of the variance if the excluded person:

a.

Is an owner, principal, agent or employee of a place of lawful employment located in the prostitution-exclusion zone; or

b.

Is required to perform employment-related services in the prostitution-exclusion zone.

(5)

Social services variance. The chief of police or his designees shall grant a social services variance to an excluded person. A social services variance allows travel within the prostitution-exclusion zone in accordance with the terms of the variance if the excluded person:

a.

Is in need of social services in the prostitution-exclusion zone;

b.

The social services are sought for reasons relating to the health or well-being of the excluded person; and

c.

The social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by their clients.

(6)

Educational variance.

a.

The chief of police or his designees shall grant an educational variance to an excluded person. An educational variance allows travel within the prostitution-exclusion zone in accordance with the terms of the variance:

1.

To enroll as a student at an educational facility located within the prostitution-exclusion zone; or

2.

To attend school at an educational facility located within the prostitution-exclusion zone.

b.

The chief of police or his designees may grant an educational variance to an excluded person to allow travel within the prostitution-exclusion zone in accordance with the terms of the variance if the excluded person will be enrolled at an educational facility within the prostitution-exclusion zone if the variance is granted.

(d)

Revocation or amendment of variances. Variances may be revoked or amended in accordance with the following provisions:

(1)

A variance may be revoked or amended for the following reasons:

a.

The excluded person provided false information in order to obtain the variance;

b.

There is probable cause to believe the person has committed any of the offenses enumerated in subsection 15-255(a) in the prostitution-exclusion zone subsequent to the issuance of the variance;

c.

If the circumstances giving rise to the issuance of the variance no longer support a continuation of the variance or a term thereof; or

d.

If the person has new circumstances that would support amending the variance.

(2)

Residential variance exception:

- a. A residential variance may be revoked only if the applicant provided false residential information in order to obtain the variance; or
- b. If the circumstances giving rise to the issuance of the variance no longer support the continuation of the variance.

(e) It shall be unlawful for any person to violate any term of any variance issued pursuant to this section.

(f) It shall be unlawful for any person to fail to carry a variance on his person or to present a variance to a Charlotte-Mecklenburg Police Department officer upon request while that person is in a prostitution-exclusion zone.

(Ord. No. 2913, § 1, 2-28-2005)

Sec. 15-259. - Penalty.

Any person who violates any provision of this article shall be guilty of a misdemeanor as provided in G.S. 14-4.

(Ord. No. 2913, § 1, 2-28-2005)

Sec. 15-260. - Listing of prostitution-exclusion zones.

The following description shall comprise the boundaries of the prostitution-exclusion zones listed, and the prostitution-exclusion zones shall include the entire area on and within the listed boundaries.

Metro Zone: Beginning within the northerly intersection of Camp Greene Street and Freedom Drive, said point also being described as the intersection point of the northerly right-of-way margin of Camp Greene Street and the northerly right-of-way margin of Freedom Drive; thence in a southeasterly direction crossing said Camp Greene Street along and with the northerly right-of-way margin of said Freedom Drive to a point located on the westerly right-of-way margin of Berryhill Road; thence crossing said Berryhill Road continuing in a southeasterly direction along and with the northerly right-of-way margin of Freedom Drive to a point located on the westerly right-of-way margin of Thrift Road, said point being located within the northwesterly intersection of said streets; thence crossing over the Thrift Road and Freedom Drive intersection along and with the extension of the aforesaid northerly right-of-way margin of said Freedom Drive to a point located on the easterly right-of-way margin of Thrift Road, also being the northerly right-of-way margin of Freedom Drive; thence in a southeasterly direction continuing along and with the northerly right-of-way margin of said Freedom Drive to a point located on the northwesterly right-of-way margin of Woodruff Place; thence crossing said Woodruff Place continuing in a southeasterly direction along and with the northerly right-of-way margin of Freedom Drive to a point located on the northwesterly right-of-way margin of Walnut Avenue; thence crossing over the Walnut Avenue and Freedom Drive intersection to a point located on the southeasterly right-of-way margin of said Walnut Avenue, said point marking the beginning of a curve to the left having a radius of 100 feet and an arc length of 168.72 feet, as shown on Map Book 3, Page 225, as recorded in the Mecklenburg County Register of Deeds Office; thence along and with said curve 168.72 feet to a point located on the northerly right-of-way margin of West Morehead Street; thence crossing said West Morehead Street in a south southwesterly direction to a point located on the southerly right-of-way margin of said street and also being located on the easterly right-of-way margin of Freedom Drive; thence crossing said Freedom Drive in a southwesterly direction along and with the southerly right-of-way margin of West Morehead Street to a point located on the easterly right-of-way margin of Bryant Street (not open); thence crossing said Bryant Street (not open) continuing in a southwesterly direction along and with the southerly right-of-way margin of West Morehead Street to a point located on the easterly right-of-way margin of Suttle Avenue; thence crossing said Suttle Avenue continuing in a southwesterly direction along and with the southerly right-of-way margin of West Morehead Street to a point located on the easterly right-of-way margin of Julian Price Place; thence crossing said Julian Price Place continuing in a southwesterly direction along and with the southerly right-of-way margin of West Morehead Street to a point located on the easterly right-of-way margin of Morton Street; thence crossing said Morton Street continuing in a southwesterly direction along and with the southerly right-of-way margin of West Morehead Street to a point located on the easterly right-of-way margin of Arty Avenue; thence crossing said Arty Avenue continuing in a southwesterly direction along and with the southerly right-of-way margin of West Morehead Street to a point located on the northerly right-of-way margin of Wilkinson Boulevard; thence crossing said Wilkinson Boulevard continuing in a southwesterly direction with the southerly right-of-way margin of West Morehead Street (extended) to a point located on the southerly right-of-way margin of said Wilkinson Boulevard; thence along and with the southerly right-of-way margin of Wilkinson Boulevard in a westerly direction to a point located on the easterly right-of-way margin of Berryhill Road; thence leaving the said southerly right-of-way margin of Wilkinson Boulevard in a southerly direction along and with the easterly right-of-way margin of said Berryhill Road to a point located in the centerline of the Norfolk Southern Railroad right-of-way; thence leaving the easterly right-of-way margin of Berryhill Road and crossing said road in a westerly direction along and with the center line of the Norfolk Southern Railroad right-of-way to a point located on the easterly right-of-way margin of Remount Road; thence crossing said Remount Road continuing in a westerly direction along and with the center line of the Norfolk Southern Railroad approximately 411 feet to the southwest corner of Tax Parcel 117-011-09, also described as #2501 Wilkinson Boulevard; thence leaving the center line of the Norfolk Southern Railroad in a northerly direction along and with the westerly property line of Tax Parcel 117-011-09 approximately 434 feet to a point, said point being the westerly most corner of said Tax Parcel 117-011-09 and also being the southwest corner of Tax Parcel 117-011-10, also described as #2533 Wilkinson Boulevard; thence continuing

in a northerly direction along and with the westerly property line of said Tax Parcel 117-011-10 approximately 150 feet to a point, said point being the northwest corner of said Tax Parcel 117-011-10, being located on the southerly right-of-way margin of Wilkinson Boulevard; thence crossing said Wilkinson Boulevard in a northerly direction to a point located on the northerly right-of-way margin of said Wilkinson Boulevard and the westerly right-of-way margin of Camp Greene Street; thence continuing in a northerly direction along and with the westerly right-of-way margin of said Camp Greene Street to a point located on the southerly right-of-way margin of Greenland Avenue; thence crossing said Greenland Avenue continuing in a northerly direction along and with the westerly right-of-way margin of Camp Greene Street to a point located on the southerly right-of-way margin of Marlowe Avenue; thence crossing said Marlowe Avenue continuing in a northerly direction along and with the westerly right-of-way margin of Camp Greene Street to a point located on the southerly right-of-way margin of Seabrook Drive; thence crossing said Seabrook Drive continuing in a northerly direction along and with the westerly right-of-way margin of Camp Greene Street to a point located on the southerly right-of-way margin of Herbert Spaugh Lane; thence crossing said Herbert Spaugh Lane continuing in a northerly direction along and with the westerly right-of-way margin of Camp Greene Street to a point located on the southerly right-of-way margin of Weyland Avenue; thence crossing said Weyland Avenue continuing in a northerly direction along and with the westerly right-of-way margin of Camp Greene Street to a point located on the southerly right-of-way margin of Royston Road; thence crossing said Royston Road continuing in a northerly direction along and with the westerly right-of-way margin of Camp Greene Street to the point and place of beginning.

(Ord. No. 2913, § 1, 2-28-2005)

PRO



ROYSTON

CAMP CREEK

HERBERT SPAUGH

GARIBALDI

MARLOWE

MARLOWE

REMOUNT

MONUMENT

GREENLAND

ARTY

WILKINSON

HIGHLAND

CAMP CREEK

NOEL

COLUMBUS

COLUMBUS

PRINCE

BERRY

FRE

Secs. 15-261—15-269. - Reserved.