



# AGENDA

## Town of Kure Beach Planning and Zoning Commission

Wednesday, May 6, 2020

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A meeting of the Planning and Zoning Commission will be held Wednesday, May 6, 2020 in the Council Chambers commencing at **6:30 PM**.

Page

### 1. CALL TO ORDER

### 2. ADOPTION OF THE AGENDA

### 3. ADOPTION OF MINUTES

- 3 - 7      3.1.    March 4, 2020 Regular Meeting  
[PZ Minutes 03-4-2020](#)

### 4. PUBLIC COMMENT

### 5. OLD BUSINESS

- 8 - 13      5.1.    Review and Report on Proposed Text Amendments to Sign Regulations  
(Eldridge)  
[Proposed Text Amendments to 15.40.040 Signs](#)  
[Memo- 15.40.040g Sign](#)  
[Consistency Statement for 15.40.040](#)

- 14 - 22     5.2.    Graffiti Ordinance (Galbraith)  
[Memo PZC Graffiti Text Amendments](#)  
[Graffiti Ordinance. Proposed Initial draft from \(3.4.20\) meeting](#)  
[GS 14-127.1](#)  
[Proposed Graffiti Text Amendments](#)

- 23 - 28     5.3.    Continued discussion of Light Pollution ordinance and Dark Sky regulations  
(Garceau)

[KB Lighting Ordinance Draft discussion points.\(for 5.6.20 pzc\)](#)

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- 5.4. Prohibited Uses (Galbraith)  
[Prohibited Uses P&Z Commission - Google Sheets](#)
- 5.5. ADA ramps on residential homes (Batson)

## **6. NEW BUSINESS**

## **7. ADJOURNMENT**



# PLANNING & ZONING COMMISSION MINUTES

**REGULAR MEETING**

**Wednesday, March 4, 2020 @ 6:30 pm**

The Kure Beach Planning and Zoning Commission (P&Z) held its regular meeting on Wednesday, March 4, 2020. A quorum of members was present and Attorney Jim Eldridge attended.

## **P&Z MEMBERS PRESENT**

Chairman Craig Galbraith  
Member Bill Moore  
Member David Garceau  
Member Kenneth Richardson  
Member Tony Garibay

## **P&Z MEMBERS ABSENT**

## **STAFF PRESENT**

Mandy Sanders, Town Clerk  
Beth Chase, Deputy Town Clerk  
John Batson, Building Inspector

## **CALL TO ORDER**

Chairman Galbraith called the meeting to order at 6:30 pm.

## **APPROVAL OF AGENDA**

MOTION- Member Richardson made a motion to amend the agenda to add discussion of proposed sign ordinance and discussion of underground utilities under new business and adopt as amended

SECOND- Member Garibay

VOTE-Unanimous

## **APPROVAL OF MEETING MINUTES:**

- February 11, 2020 Regular Meeting

MOTION – Member Moore made a motion to approve the meeting minutes for February 11, 2020

SECOND – Member Richardson

VOTE- Unanimous

## **PUBLIC COMMENTS**

Alicia Debaro stated she is a Kure Beach resident and lives at 108 Alabama Ave. She came to speak to PZC as she saw light pollution was on the agenda for tonight. Her neighbor behind her last summer changed out the front lights on their porches. The lights go on at dusk and stay on till dawn and shine through her windows. She has reached out to the neighbors and asked them to consider installing motion detector lights and offered to install a ring doorbell at her cost. She has had to install room darkening shades and can't use her own property due to the lights.



## PLANNING & ZONING COMMISSION MINUTES

**REGULAR MEETING**

**Wednesday, March 4, 2020 @ 6:30 pm**

### OLD BUSINESS

#### 1. Graffiti Ordinance

Chairman Galbraith stated:

- The Commission received a graffiti ordinance from him earlier today
- Kure Beach doesn't currently have a graffiti problem, but this is a proactive approach
- He has done research on other small towns in NC
- One NC Town had no issue for years until overnight one vacant building had damage to the property with no way to deal with this practical issue
- Graffiti is the number one act of vandalism in the United States and has a huge impact on property values
- He drafted a very simple ordinance that includes all the main issues the Town needs to address
- Research shows the ordinance needs to identify that the person who does the graffiti is the offender and responsibility of mitigation for the property owner

Member Garibay commented he is struggling what the definition of graffiti is and another person may have a different opinion. He wants to make sure someone can't challenge the Town's definition of graffiti.

Building Inspector Batson stated the Town has had one graffiti incident in Town.

Attorney Eldridge commented he needs more time to review the graffiti ordinance as he had only received a copy today. Attorney Eldridge inquired whether graffiti regulation will be a criminal or a civil code enforcement matter. If it is to be a code enforcement approach, then applicable provisions are needed for civil citations, penalties, etc. If it is criminal in nature, then the Town cannot dictate what the courts must do and any criminal penalties collected by the Town end up being school board property.

MOTION- Chairman Galbraith made a motion to table graffiti ordinance to the April agenda

SECOND- Member Garibay

VOTE- Unanimous

#### 2. Legislative update and recommendations

- Proposed text amendments to Chapter 11 Buildings and Building Regulations
- Proposed text amendments to Chapter 14 Subdivision Regulations

Attorney Eldridge stated the legislative update consists of two parts. Part one which became effective last July and part two which becomes effective in January 2021 which consolidates and codifies in a new Chapter 160D most of the City and County Planning and Land Development statutes. Tonight, PZC will have finished the part one changes. He has requested Deputy Town Clerk



## PLANNING & ZONING COMMISSION MINUTES

### REGULAR MEETING

Wednesday, March 4, 2020 @ 6:30 pm

Chase to remove Legislative update and recommendations for the next few months as he reviews part two.

MOTION- Member Gareacu made a motion to recommend to the Town Council the proposed text amendment to Chapter 11 Buildings and Building Regulations and the proposed text amendment to Chapter 14 Subdivision Regulations

SECOND- Member Garibay

VOTE- Unanimous

### 3. Light Pollution ordinance and Dark Sky regulations

Member Garceau stated:

- As previously mentioned, he has looked at various codes from around the country
- There are significant grants available to help Towns accomplish this goal
- Purpose for the light pollution ordinance is to set standards to promote health, safety and welfare for the Town by establishing maximum intensities of lightening and controlling glare
- The light pollution ordinance will include a list of definitions related to lighting Attorney Eldridge will need to review any proposed regulations
- Some examples would be it defines glare, outdoor lighting, and recreation lighting
- Discussion for the Commission is how does the Town transition into this ordinance and how does the Town handle violations

Member Garibay stated this is a light trespass issue as the lighting shouldn't be going past the property line. The commission needs to look at the light ordinance the same way the Town looks at a noise ordinance.

Attorney Eldridge stated the Town can actually measure the light or use the reasonable person approach.

MOTION- Member Richardson made a motion to table light pollution to the April meeting

SECOND- Member Garibay

VOTE- Unanimous

### 4. Prohibited Uses

Member Richardson commented he started a prohibited use list for the Commission to expand on.

Chairman Galbraith stated Deputy Town Clerk Chase will be sending out a list through Google docs for the commission to add additional items.

MOTION- Member Gareacu made a motion to table prohibited uses to the April agenda

SECOND- Member Moore

VOTE- Unanimous



# PLANNING & ZONING COMMISSION MINUTES

**REGULAR MEETING**

**Wednesday, March 4, 2020 @ 6:30 pm**

## **NEW BUSINESS**

### **1. Political Sign Ordinance**

Attorney Eldridge stated while section 15.40.040.G exempts some signs from the regulations, it prohibits political signs within the town right-of-way and within 50 feet of polling places 24 hours prior to an election. The section also, by implication, prohibits political signs from being erected on private property during any other times except what is set forth in the section: 30 days before early voting begins until 10 days after the election. Additionally, the code defines "temporary" signs, but does not "political" signs leaving that term open to being broadly construed. In contrast with the town's current 30/10 limit tied to elections, the school of government recommends a 90-day durational period not tied to a particular event. Attorney Eldridge recommends text amendment to sec. 15.40.040.G which replace "political" with "temporary;" expands the durational period for temporary signs on private property to not less than 90 nor more than 180 days; and *not* tie the durational period of temporary signage on private property to an event.

**CONSENSUS-** The Commission agrees the durational period for temporary signs should be 90 days and directs Attorney Eldridge to draft text amendments based on his recommendations and to bring those proposed amendments forward at the April meeting.

**MOTION-** Chairman Galbraith made a motion to table this item to the April meeting under old business with a recommendation for Town Council

**SECOND-** Member Richardson

**VOTE-** Unanimous

### **2. Underground Utilities**

Member Richardson stated he would like formal permission from the Town Council to gather information for the Town regarding underground utilities. He has already done research of other Towns that have received grant money to put the utilities underground.

Chairman Galbraith commented he will bring it forward to Town Council to receive approval for PZC to do research if grants are available for underground utilities.

## **MEMBER ITEMS**



## PLANNING & ZONING COMMISSION MINUTES

**REGULAR MEETING**

**Wednesday, March 4, 2020 @ 6:30 pm**

### ADJOURNMENT

MOTION- Member Richardson made a motion to adjourn the meeting at 7:43 p.m.

SECOND- Member Moore

VOTE- Unanimous

ATTEST: \_\_\_\_\_  
Mandy Sanders, Town Clerk

\_\_\_\_\_  
Craig Galbraith, Chairman

NOTE: These are action minutes reflecting items considered and actions taken by Planning and Zoning Commission. These minutes are not a transcript of the meeting. A recording of the meeting is available on the town's website under government>planning and zoning.

DRAFT

#### 15.40.040 Exceptions

The signs listed below are excluded from these regulations:

- A. Signs not exceeding four (4) square feet in area and bearing only property numbers, post office box numbers, names of occupants of premises, or other identification of premises not having commercial connotations and are on owner's property.
- B. Flags, signs, and insignias of any governmental agency, except where displayed in connection with commercial promotion; items in this category are not to exceed thirty-two (32) square feet.
- C. Signs directing and guiding traffic, parking and safety signs on private property, but bearing no advertising matter. Items in this category are not to exceed six (6) square feet.
- D. Yard sale and for sale signs which are temporary. Items in this category are not to exceed six (6) square feet. All signs in this category must be set off street right-of-way in all zones except commercial. All signs in this category in the commercial district must be set back three (3) feet from the right-of-way. If three (3) feet is not available the sign must be behind the sidewalk or attached to the structure.
- E. Signs located on church property not exceeding thirty-two (32) square feet. A maximum of two (2) church signs directing persons to churches located within the town not exceeding four (4) square feet each.
- F. Current residential monument signs erected prior to 2008 are allowed. Monument signs must be approved and are subject to the subdivision approval process.
- G. ~~During the period beginning on the thirtieth (30th) day before the beginning date of "one-stop" early voting and ending on the tenth (10th) day after the primary, run-off, general or election day,~~ Temporary signs may be erected on ~~any~~ privately owned premises for a cumulative durational period of ninety (90) days within a single calendar year. ~~Political signs may not exceed six (6) square feet in size.~~ Temporary signs will not be allowed ~~with~~ within the right-of-way ~~within~~ the town limits or on any publicly owned property. Temporary signs in the extraterritorial jurisdiction shall be placed near the tree line from the edge of the road. Temporary signs may not be erected within fifty (50) feet of ~~the town hall~~ Town Hall or polling places twenty-four (24) hours prior to the scheduled election subject to limits imposed by the New Hanover County Board of Elections. ~~Temporary signs may not exceed six (6) square feet in size.~~
- H. During the period beginning on the thirtieth (30th) day before the beginning date of "one-stop" early voting and ending on the tenth (10th) day after the primary, run-off, general or election day, political signs may be erected on any privately owned premises. Political signs may not exceed six (6) square feet in size. Political signs will not be allowed within the right-of-way in the town limits or any publicly owned property. Political signs in the extraterritorial jurisdiction shall be placed near the tree line from the edge of the road. Political signs may not be erected within fifty (50) feet of the town hall or polling place twenty-four (24) hours prior to the scheduled election subject to limits imposed by the New Hanover County Board of Elections.
- I. Historically significant signs. The Federal Point Historic Preservation Society, the committee charged with protecting historical districts, may nominate signs located in such districts as historically significant signs. The town council shall hold a public hearing and make final determination as to the historical significance of such nominated sign, and if such sign is found to be historically significant, then the prohibition herein shall not regulate such sign. However, such sign may only be maintained and shall not be enlarged, diminished or significantly changed, and in the event of such notification of change, it shall lose the protection as an historically significant sign.
- J. Freestanding or monument signs for existing homeowner associations of more than four (4) lots noting only entrances, and/or common areas designated for owners use i.e. pool, parking lot, tennis court, clubhouse, etc. Signs shall be limited to thirty-two (32) square feet and up to eight (8) feet tall, shall be illuminated from the exterior only, and shall be constructed of the same material to have a similar look of the homes located within the HOA. No sign shall contain any changeable



copy system. When using this exception, no more than two (2) signs per entrance and/or common areas are allowed. Permitting process of KBC 15.40.050 applies.

(Ord. of 6-16-09; Ord. of 10-20-09; Ord. of 3-15-11, # 3; Ord. of 4-21-16; Ord. of 10-22-18)

**ELDRIDGE LAW FIRM, P.C.**

*ATTORNEY AND COUNSELOR AT LAW*

201 NORTH FRONT STREET, SUITE 906

REPLY TO:  
JAMES E.  
ELDRIDGE

TELEPHONE: (910) 815-  
0107  
MOBILE: (910)

**MEMORANDUM**

**TO: JOHN BATSON, BUILDING INSPECTOR**  
**FROM: JAMES E. ELDRIDGE, PZC ATTORNEY**  
**DATE: MARCH 3, 2020**  
**RE: KBC SEC. 15.40.040.G**

**BACKGROUND**

A resident has apparently inquired as to whether KBC Sec. 15.40.040.G (Exemptions) impermissibly infringes upon First Amendment rights to free speech. The resident has likewise questioned the authority of the Town to regulate signage within the Town’s right-of-ways (“ROW’s”) and within 50 feet of a voting place. Having researched and analyzed these issues, this memorandum sets forth my findings and concludes that: 1) Sec. 15.40.040.G does raise First Amendment issues as currently drafted; 2) the Town has broad authority to regulate signage within its ROW’s; and 3) the prohibition against signage within the buffer of a voting place is pursuant to North Carolina General Statutes which supersedes the Town’s authority. This memorandum also concludes that it is an “easy fix” to amend Sec. 15.40.040.G and resolve the First Amendment issues.

**DISCUSSION**

Sec. 15.40.040.G exempts the following from Chapter 15’s sign regulations:

During the period beginning on the thirtieth (30th) day before the beginning date of "one-stop" early voting and ending on the tenth (10th) day after the primary, run-off, general or election day, political signs may be erected on any privately owned premises. Political signs may not exceed six (6) square feet in size. Political signs will not be allowed within the right-of-way in the town limits or any publicly owned property. Political signs in the extraterritorial jurisdiction shall be placed near the tree line from the edge of the road. Political signs may not be erected within fifty (50) feet of the town hall or polling place twenty-

four (24) hours prior to the scheduled election subject to limits imposed by the New Hanover County Board of Elections.

While Sec. 15.40.040.G exempts some signs from the regulations, it nonetheless prohibits political signs within Town ROW's and within 50 feet of polling places 24 hours prior to an election. More importantly, the section also, by implication, prohibits political signs from being erected on private property during any other times except what is set forth in the section: 30 days before early voting begins until 10 days after the election. It should also be noted that while the Code defines "temporary" signs, it does not provide a definition for "political" signs which leaves that term open to being broadly defined.

The United States Supreme Court, in the recent case of *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), held that regulating signs on the basis of content was subject to a "strict scrutiny" standard of review as to the constitutionality of such regulations. Applying that standard to the defendant town's ordinance which made distinctions between campaign, ideological, and event-based signs, the Court struck down the ordinance as being unconstitutional since it regulated signs based on their content.

The Supreme Court's decision in *Reed* reveals that Sec. 15.40.040.G is likewise subject to a constitutional challenge because the section's prohibitions against signage in the ROW's or outside the 30/10 day time period on private property only pertain to political signage and are therefore content-based regulations which impermissibly infringe upon First Amendment rights. As noted above, these risks can be largely eliminated by amending Sec. 15.40.040.G to replace "political" with "temporary" which is a content-neutral distinction.

Regulating content-neutral temporary signage, together with the Town's broad authority to regulate/prohibit such signage in its ROW's is a proper and generally risk-free exercise of the Town's authority to regulate signage within the ROW's and on public property. Likewise, regulating content-neutral signage on private property is a proper exercise of municipal zoning authority

provided that, however, the durational limit for the placement of such signs is not overly restrictive as was briefly addressed in the *Reed* decision.

In contrast with the Town's current 30/10 limit tied to elections, the School of Government recommends a 90-day durational period that is not tied to a particular event. For example, tying the 90 day period to an election (which could be characterized as a content-based element even for temporary signage), raises the question of why temporary signage on private property is not allowed in connection with any other event such as a religious holiday, etc.

Finally, the prohibition against placing signage within the buffer of a voting place is mandated under G.S. § 163-166.4(a) and supersedes any authority the Town may have with respect to the same.

#### **RECOMMENDATIONS**

Review this matter with Town Council and request its authorization for PZC to draft, review, and recommend to Council a proposed text amendment to Sec. 15.40.040.G that:

1. Replaces "political" with "temporary;"
2. Reasonably expands the durational period for temporary signs on private property to not less than 90 nor more than 180 days; and
3. Does *not* tie the durational period of temporary signage on private property to an event.



**TOWN OF KURE BEACH  
PLANNING & ZONING COMMISSION**

PZC Meeting Date: May 6, 2020  
Agenda Item: Old Business, No. 1

**ZONING CONSISTENCY STATEMENT  
N.C.G.S. 160A-383**

X Consideration of the following proposed text amendments to Chapter 15 *Zoning* of the Town of Kure Beach Code (hereinafter “KBC”):

1. 15.40.040 *Exceptions*

X The proposed text amendments are CONSISTENT WITH the objectives/policies of the Town of Kure Beach Land Use Plan (“LUP”).

X The proposed text amendments are CONSISTENT WITH Part 3, Section 2 of the LUP.

The proposed text amendments are NOT CONSISTENT WITH Part \_\_\_\_\_, Section \_\_\_\_\_ of the LUP.

The Planning and Zoning Commission (“PZC”) requests Town Council’s consideration and adoption of the proposed text amendments to KBC 15.40.040 which are attached hereto and incorporated herein by reference. KBC 15.40.040 provides exceptions to the Town’s sign regulations and the current text of sub-section G therein regulates “political” signs. This is a content-based regulation that violates First Amendment rights as recently held by the United States Supreme Court in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) (striking down defendant town’s ordinance which made distinctions between campaign, ideological, and event-based signs thereby violating the content-neutral standard required under the Constitution for enforceable sign regulations). The proposed text amendments resolve this issue by replacing “political signs” with “temporary signs” and by not tying the placement of temporary signs on private property to particular events (which, by implication, entails content-based regulation).

The PZC finds that adopting the amendments will be reasonable and in the public interest inasmuch as they are consistent with the community goals, set forth in Part 3, Section 2 of the LUP, of preserving environmental attributes, providing for the “harmonic adaptation” of built uses in close proximity to one another, and minimizing impacts on man-made and natural areas; all of which further public health, safety, and welfare.

Based on these findings, PZC recommends that Town Council adopt the proposed text amendments.

**TOWN OF KURE BEACH  
PLANNING AND ZONING COMMISSION:**

\_\_\_\_\_  
Craig Galbraith, Chairman

# ELDRIDGE LAW FIRM, P. C.

ATTORNEY AND COUNSELOR AT LAW

201 NORTH FRONT STREET, SUITE 906  
WILMINGTON, NC 28401

REPLY TO:  
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WILMINGTON, NC 28402

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## MEMORANDUM

**TO: KURE BEACH PZC**  
**FROM: JAMES E. ELDRIDGE, PZC ATTORNEY**  
**DATE: APRIL 29, 2019**  
**RE: GRAFFITI REGULATIONS**

## DISCUSSION

The initial draft of the proposed graffiti ordinance, a copy of which is included in the agenda packets, has two policy objectives: to deter graffiti by criminalizing the act and to abate the offensive and injurious aspects of graffiti. As discussed in the March meeting, criminalizing graffiti at the local level means that any criminal fines collected by the Town end up, under well-settled state law, constituting property of the local school board. This can be avoided by decriminalizing graffiti at the local level.

Moreover, any local criminalization of graffiti is probably pre-empted by state law under the 2015 enactment of N.C.G.S. Sec. 14-127.1 which makes graffiti vandalism a crime. In the 2014 case of *King v. Town of Chapel Hill*, the North Carolina Supreme Court held that, *inter alia*, a local ordinance is preempted if it regulates “a field for which a state...statute shows a legislative intent to provide...a regulatory scheme to the exclusion of local regulation.” This is implied rather than express preemption and it is found to exist when a court determines, by examining what the relevant statute is designed to accomplish, that the General Assembly intended to provide a complete regulatory scheme of the subject matter. N.C.G.S. Sec. 14-127.1 seeks to prevent graffiti vandalism which appears to be a complete regulatory scheme in and of itself. Thus considered, any local attempt to criminalize graffiti will be subject to a preemption challenge which entails increased legal fees on the part of the Town and the risk, if the Town loses, of having the challenging party’s attorney’s fees taxed against it.

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For these reasons, the proposed code amendments do not criminalize graffiti and, instead, provide that graffiti constitutes a public nuisance that is regulated under the enforcement provisions in Chapter 8 of the Town Code.

Utilizing these enforcement measures, a new section is proposed for Article 2 of Chapter 8 which provides that the creation (by the vandal) and maintenance (by the property owner's failure to remove it) of graffiti constitute public nuisances which the Town can: prohibit and mandate its abatement; issue civil citations for the creation and maintenance of the public nuisance; and commence civil actions to collect unpaid citations and obtain court orders of abatement. The proposed amendments also strengthen the Town's authority to collect its enforcement costs, including the costs of any abatement it undertakes and, in the event a civil action is commenced to collect an unpaid citation or obtain an abatement order, providing that the Town be awarded its court costs including a reasonable attorney's fee.

#### **RECOMMENDATION**

It is recommended that PZC review the proposed graffiti regulations and forward them onto Council with a recommendation of adopting them. This is not a zoning matter and a consistency statement is therefore not required.

## Proposed Graffiti Ordinance

### Kure Beach Planning and Zoning Commission (3/4/2020)

(a) *Graffiti prohibited.* It shall be unlawful for any person to write, paint, inscribe, scratch, scrawl, spray, place or draw graffiti of any type on any public or private building, structure or any other real or personal property. For purposes of this section, graffiti shall mean any unauthorized inscription, word, figure, painting or other defacement, heretofore known as graffiti, that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance and prohibited.

(b) *Exemption.* Subsection (a) of this section shall not be construed to prohibit temporary, easily removable chalk or other water-soluble markings on public or private sidewalks, streets or other paved surfaces which are used in connection with traditional children's activities, such as drawings or bases for stickball, kickball, handball, hopscotch or similar activities, nor shall it be construed to prohibit temporary, easily removable chalk or other water soluble markings used in connection with any lawful business or public purpose or activity.

(c) *Offense of Graffiti Application.* It shall be unlawful for any person within the limits of the Town of Kure Beach to commit the offense of application of graffiti.

*Action by court.* Any person convicted of the offense of application of graffiti shall be fined not less than \$250.00 for a first offense and \$500.00 for second and subsequent offenses. In determining the fine to be imposed, the court may consider the efforts, if any, taken by the responsible person to remove or effectively obscure the graffiti during the preceding calendar year.

*Restitution.* In addition to any other punishment imposed, the court shall order the person convicted of the offense of application of graffiti to make restitution to the victim for the damage or loss suffered by the victim as a result of the offense. The court may determine the amount, terms, and conditions of the restitution.

(d) *Removal of Graffiti.* It shall be unlawful for any person owning property, acting as manager or agent for the owner of property, or in possession or control of property to fail to remove or effectively obscure any graffiti upon such property after fifteen (15) days after being notified in writing by an official of the Town of Kure Beach to mitigate, clean-up or otherwise eliminate the graffiti.

If the owner or occupant of any such property shall fail to clean the premises or remove graffiti within fifteen (15) days after having been notified in writing by an official of the Town of Kure Beach it shall constitute a violation of this article. A separate violation shall be deemed to occur for each and every day or portion thereof during which any violation of the requirements of this article is committed or continued." Each violation will be fined \$25 per day after the fifteen (15) day compliance period ends.

If the said graffiti is not removed with fifteen (15) days after written notification , the Commissioners of the Town of Kure Beach shall have the full power and authority to order that



the offending premises be cleaned and/or secured and to authorize entry upon such premises for such purpose; to have graffiti removed or obliterated and assess the property for the cost of the cleaning, removal and/or closing and securing. Such assessment shall constitute a lien on the property until paid.

*(e) Emergency Removal.* The Town may remove or cause the graffiti to be removed at its expense if the city determines that any graffiti is a danger to the health, safety, or welfare of the public and is unable to provide a notice of violation to the responsible person, or if the city determines that any graffiti contains profanity, obscene language, or obscene imagery.

**§ 14-127.1. Graffiti vandalism.**

(a) As used in this section, "graffiti vandalism" means to unlawfully write or scribble on, mark, paint, deface, or besmear the walls of (i) any real property, whether public or private, including cemetery tombstones and monuments, (ii) any public building or facility as defined in G.S. 14-132, or (iii) any statue or monument situated in any public place, by any type of pen, paint, or marker regardless of whether the pen or marker contains permanent ink, paint, or spray paint.

(b) Except as otherwise provided in this section, any person who engages in graffiti vandalism is guilty of a Class 1 misdemeanor. A person convicted of a Class 1 misdemeanor under this subsection shall be fined a minimum of five hundred dollars (\$500.00) and, if community or intermediate punishment is imposed, shall be required to perform 24 hours of community service.

(c) Any person who violates subsection (a) of this section shall be guilty of a Class H felony if all of the following apply:

- (1) The person has two or more prior convictions for violation of this section.
- (2) The current violation was committed after the second conviction for violation of this section.
- (3) The violation resulting in the second conviction was committed after the first conviction for violation of this section. (2015-72, s. 1.)

**8.02 WEEDS, WEED GROWTH, TRASH, GARBAGE, REFUSE, AND DEBRIS, AND GRAFFITI**

8.02.010 Nuisances Declared; Enumeration

8.02.015 Graffiti Nuisance

8.02.020 Complaint; Investigation

8.02.030 Notice To Abate

8.02.040 Abatement By Town - Upon Failure Of Owner

8.02.050 Same - Costs Charged To Owner

8.02.060 Same - Unpaid Charges Become A Lien

8.02.070 Additional Remedies

**State law reference(s)**—Authority to prohibit and dispose of abandoned and junked motor vehicles, G.S. § 160A-303.

**8.02.010 Nuisances Declared; Enumeration**

The existence of any of the following conditions on any lot or other parcel of land within the corporate limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- A. The uncontrolled growth of noxious weeds or grass to a height in excess of six (6) inches causing or threatening to cause a hazard detrimental to the public health or safety, including fallen trees and tree damage caused by storms;
- B. Any accumulation of waste, animal or vegetable, such as but not limited to waste material and refuse from kitchens, residences, grocery stores, butcher shops, restaurants, cafes, hotels, rooming houses and boarding houses, and all other deleterious substances that are offensive by virtue of odors, vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which are or may be dangerous or prejudicial to the public health;
- C. Any accumulation of rubbish, garbage, trash, or any material of any kind that has been discarded, rejected, cast aside, stored or thrown away as worthless or junk causing or threatening to cause a fire hazard or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes or vermin of any kind which are or may be dangerous or prejudicial to the public health;
- D. Any accumulation of trash, rubbish such as tin cans, paper, boxes, glass, wood, shrubs, yard clippings, leaves, tree trimmings and other deleterious substances on the premises of private residences, commercial institutions and in the streets which greatly increases the danger of fire and spread of infections, contagious and epidemic diseases, shall constitute a public menace and nuisance;
- E. Any accumulation of construction or demolition debris such as bricks, concrete, lumber, scrap lumber, ashes, dirt, plaster, or large chunks or metal, such as automobile bodies, frames, stoves, refrigerators, beams or other metal materials shall not be stored, kept or placed upon any property unless prior arrangement for collection of such materials have been made and approved by the town;
- F. Any accumulation of abandoned or deteriorated structure such as boats, dog houses, storage sheds or the like which greatly increase the danger of fire and spread infections, contagious and epidemic diseases shall constitute a public menace and nuisance;
- G. Any condition detrimental to the public health which violates the rules and regulations of the county health department.

(Ord. of 7-21-92)

### **8.02.015 Graffiti Nuisance**

- A. *Findings.* Graffiti is the number one vandalism crime in the United States which significantly and adversely impacts property values and economic development and is often associated with actual or perceived gang activity such that, being prejudicial to public health, safety, and welfare, graffiti is hereby declared to constitute a public nuisance.
- B. *Definition.* As used in this section, “graffiti” means any marking, including but not limited to, any inscription, slogan, drawing, painting, symbol, logo, name, character, or figure, that is written, scripted, marked, etched, scratched, sprayed, drawn, painted, or engraved, or made in any other manner, on tangible public or private real or personal property.
- C. *Exemptions.* Graffiti shall not be construed to mean:
  - 1. Temporary, easily removable chalk or other water-soluble markings on sidewalks and other surfaces utilized in connection on with children’s activities, including, but not limited to, baseball, stickball, kickball, hopscotch.
  - 2. Markings lawfully made on real or personal property with the property owner’s consent which do not violate any provisions of the Town Code, including but not limited to, the town’s sign regulations.
- D. *Prohibition; Abatement.*
  - 1. Graffiti is prohibited and any person engaging in graffitiing is guilty of graffiti vandalism under N.C. Gen. Stat. § 14-127.1 and shall also be subject to the civil penalties and remedies set forth in this article for the creation of a public nuisance.
  - 2. An owner of real or personal property shall be subject to the civil penalties and remedies set forth in this article for maintaining a public nuisance if the owner fails to remove all graffiti from the property within fifteen (15) days after the date on which the written notice to abate provided under KBC 8.02.030 is received.

### **8.02.020 Complaint; Investigation**

The building inspector, upon notice from any person of the existence of any of the conditions described in KBC 8.02.010 and KBC 8.02.015, shall cause to be made by the appropriate county health department official, or town official, such investigation as may be necessary to determine whether in fact such conditions exist as to constitute a public nuisance as declared in such section.

(Ord. of 7-21-92)

### **8.02.030 Notice To Abate**

Upon a determination that such conditions constituting a public nuisance exist, as specified in KBC 8.02.010 subparagraphs B, C, D, E, F and G, and KBC 8.02.015, the building inspector shall notify, in writing, the owner, occupant, or person in possession of the subject premises ~~in question~~ of the conditions constituting such public nuisance and shall order the prompt abatement thereof within fifteen (15) days ~~from the receipt of after the date on which said written notice was received..~~

Upon a determination that such conditions constituting a public nuisance exist as defined in KBC 8.02.010 subparagraph A and given the fact that weeds and grass continue to grow at a rapid rate at certain times of the year, the building inspector shall in the spring of the year notify, in writing, the owner of the premises in question of the conditions constituting such public nuisance and shall order the prompt and continuous

abatement thereof which shall be the responsibility of the owner thereof to keep and maintain his property in compliance with existing public health and safety regulations throughout the year. No further notice for the year shall be required.

(Ord. of 7-21-92; Ord. of 5-19-98; Ord. of 2-16-99)

**8.02.040 Abatement By Town - Upon Failure Of Owner**

If any person, having been ordered ~~under KBC 8.02.020~~ to abate such a public nuisance, fails, neglects or refuses to abate or remove the condition constituting the nuisance within fifteen (15) days ~~from receipt of after the date on which the order was received~~, the building inspector or his designee shall seek town council approval to cause said condition to be removed or otherwise ~~remedied~~ abated by having employees of the town or other designated persons ~~to~~ go upon said premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the town council. ~~In the event the employees or designated persons are denied entry on to the property, the town shall have recourse to any available remedy in law or equity to secure entry.~~

(Ord. of 7-21-92)

**8.02.050 Same - Costs Charged To Owner**

- A. The actual cost incurred by the town in removing or otherwise ~~remedying~~ abating a public nuisance shall be charged to the owner of such lot or parcel of land and it shall be the duty of the finance department to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within thirty (30) days ~~from the after the date on which the statement was received. receipt thereof.~~ In addition to the actual ~~contract~~ cost, there shall be added an administrative overhead fee, such fee shall be determined by the town council.
  
- B. ~~In the event the town commences a civil action to collect an unpaid civil citation or obtain an order of abatement, the town shall be entitled to recover from the defendant the costs of such action, including but not limited to, court costs, enforcement costs including expenses and fees for any related inspections, clean-up, and/or abatement, and a reasonable attorney's fee.~~

(Ord. of 7-21-92)

**8.02.060 Same - Unpaid Charges Become A Lien**

If charges for the removal or abatement of a public nuisance ~~are not paid by the property owner~~ within thirty (30) days after the ~~date on which a receipt of~~ a statement of charges ~~was received as provided for in~~ ~~under KBC 8.02.050.A~~ or if a court-ordered award of costs to the town as provided for in ~~KBC 8.02.050.B~~ is not paid by the defendant within thirty (30) days after the date on which the order was entered by the court, such charges/costs shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes as provided in G.S. § 160A-193. ~~Any unpaid charges/costs shall also be a lien on any other real property owned by the owner/defendant located in or within one (1) mile of the town's corporate limits.~~

(Ord. of 7-21-92)

**8.02.070 Additional Remedies**

The procedure set forth in this article shall be in addition to any other remedies that may now or hereafter exist ~~under in law or equity~~ for the abatement of public nuisances, and this article shall not prevent the town from issuing a civil citation ~~subjecting the offender to a civil penalty in the amount of twenty-five dollars (\$25.00) for each day the violation continues to exist in accordance with the provisions of and proceeding~~

~~under KBC 1.08.010 and~~ KBC 1.08.020 or proceeding in a criminal action against any person violating the provisions of this article as provided in G.S. § 14-4 or both.

(Ord. of 7-21-92)

## Part 1

### OUTDOOR LIGHTING STANDARDS

#### Purpose

The purpose and intent of this article is to create outdoor lighting standards that promote the health, safety and welfare of the residents of the Town of Kure Beach by establishing maximum intensities of lighting and controlling glare from lighting fixtures.

#### Applicability

The provisions of this article shall apply to all permanent outdoor lighting from an artificial light source in all Kure Beach districts except the B1 business district, where that light does not affect a neighboring residential property.

Properties within the B1 district that do not affect neighboring residential properties are encouraged to voluntarily follow the guidelines, particularly when light fixtures are being repaired or replaced.

#### Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section. In the absence of a specific technical definition, words and phrases shall have those definitions and meanings as provided by the Illuminating Engineering Society of North America.

*Accent light.* Lighting that is intended to draw attention to specific features of a building or which constitute decorative features in their own right.

*Area light.* Light that produces more than one thousand eight hundred (1,800) lumens.

*Cutoff, full.* A lighting fixture that emits zero (0) percent of its light above ninety (90) degrees and ten (10) percent above eighty (80) degrees from horizontal.

*Floodlight.* Any light that produces no more than one thousand eight hundred (1,800) lumens in a broad beam designed to saturate or illuminate a given area with light. Generally, flood lights produce from one thousand (1,000) to one thousand eight hundred (1,800) lumens. Floodlights are directional fixtures.

*Glare.* The sensation produced by lighting that results in annoyance, discomfort or a reduction of visual performance and visibility, and includes direct and reflected glare. All directional fixtures and any fixture with an output of more than one thousand eight hundred (1,800) lumens that is visible, either directly or by reflection, from adjacent properties or streets shall be considered to cause glare.

*Outdoor lighting.* Lighting located outside of an enclosed building, or otherwise installed in a manner that lights any area other than the inside of an enclosed building.

*Recreational lighting.* Fixtures of a type or intensity designed or used to light sports courts and swimming pools.

*Up light.* The portion of light from any source emitted at angle above the horizontal.

#### Prohibited outdoor lighting.

Lighting that results in glare onto adjacent residentially zoned properties is prohibited, provided that fixtures activated only when motion is detected within the property upon which they are located may cause glare if the fixture shuts off within five (5) minutes of being activated, is not aimed at any residential window, and is not consistently activated by human activity or animal activity after 10:00 p.m.

[Possible exclusion for existing street lighting of public roads so as not to burden the town with changes ???]

Up lighting, including search lights, laser lights or any other high intensity beam shall be prohibited, exclusions are allowed for

- 1) Illumination of a vertical wall or roof as accent lighting shall be allowed provided that reflected light from windows and other surfaces must not cause glare and the up light shall not spill over the roof line.



- 2) Up-lighting of the United States flag, including other flags or pennants flown on the same halyard and stationary flagstaff; i.e. the State of North Carolina Flag and the municipal flag are permitted. Shielding should be used to control the uplit area.

Blinking, flashing, moving, flickering, changing intensity, rapid color changing lights are prohibited unless the lights are required as a safety feature (e.g. Alarm systems, beacons or towers) or are permitted as part of a sign in accordance with the sign ordinances in (sign ordinance Location)

#### Maintenance.

Lighting fixtures and ancillary equipment shall be maintained so as to always meet the requirements of this article.

Vegetation screens shall not be employed as the primary means of controlling glare. Glare control shall be achieved primarily through the use of cutoff fixtures, shields and baffles, and the appropriate application of fixture mounting height, lighting intensity, placement and angle.

#### Light measuring technique

Light level measurements shall be taken at the property line at which the light being measured is generated. If this is not possible or practical, the measurement may be made at the closest reasonable location. Glare and light levels should pass the reasonable person expectations test. Should this determination become challenged, the test must be completed by a third party using calibrated light measurement tools with the cost of such testing to be settled between the disputing parties.

#### Specifications for challenged situations.

The overspill of light originating from any lot, regardless of zoning, onto any other lot located outside of the B1 business zoning district shall not exceed five-tenths of a (0.5) horizontal foot-candle measured four feet (4') above grade level at the property line.

Uplit walls and facades, where permitted for accent lighting, shall not have an intensity exceeding 5.0 foot-candles.

#### Violations and enforcement

Anyone violating the provisions of this article shall be given a thirty-day notice to come into compliance. Conviction of failure to comply after notice shall result in a fine of fifty dollars (\$50.00). Each day of violation shall constitute a separate offense. Enforcement of this article shall reside in any constitutional law enforcement agency and the Kure Beach building inspector, or any agents so designated by Kure Beach town council.

## **Part 2**

### **BEACHFRONT LIGHTING STANDARDS**

#### Purpose.

The purpose of this article is to reduce impacts of coastal lighting on the nesting and hatching of threatened and endangered sea turtles by safeguarding nesting females and the hatchlings from sources of artificial light.

#### Applicability

No lighting shall be installed, maintained or illuminated on public or private property that would be directly visible from or illuminate the beach from sunset to sunup during the sea turtle nesting season from May 1 through October 31 of each year. This includes interior light directly visible through glass windows, doors and walls (either facing or perpendicular to the beach) as well as light from pools, fire pits, electronic devices such as televisions, tiki torches, etc.

The town, utility companies, private property owners, rental unit tenants, and any other person or entity that provides or operates lighting in, on or near the beach area are each responsible

for ensuring that their own lighting is controlled so as not to be directly visible from or illuminate the beach from sunset to sunup during this season.

All site plans for new development and redevelopment along the beach shall be required to demonstrate that the proposed development or redevelopment will comply with this section by identifying the specific measures that will be employed to control lighting.

For existing development along the beach, affected entities shall be required to immediately implement measures not involving any capital expenditures, such as switching-off exterior lights that are directly or indirectly visible from or illuminate the beach and closing existing draperies to shield interior lights during the turtle nesting season. Appropriate measures necessary to fully comply with this section should be completed on or before May 1, 2023.

#### Exclusions

The provisions contained in this section shall not apply to the lighting on the historically significant Kure Beach Pier, although the Pier is encouraged to utilize lights with long wavelength light sources that are less disruptive to sea turtle behaviors.

Outdoor lighting that uses fully-shielded, full cut-off, downward directed fixtures with a long-wavelength light source is allowed, provided that the Lamp/Bulb must ONLY produce long wavelength light (560 nm or greater, which is amber, orange, or red) and be of the lowest reasonable intensity for the purpose needed.

#### Enforcement

Any person or entity found to be in violation of this code section shall be issued a notice to appear and shall appear at the prearranged court date to answer the charge. A conviction for violation of this section shall result in a fine up to five hundred dollars (\$500.00) or imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment at the discretion of the judge.

## PROPOSED LIGHTING ORDINANCE

### DISCUSSION POINTS

1. The policy goals supporting regulation of exterior lighting are laudable and are legitimately justified for public health, safety, and welfare.
2. Is Council aware of this initiative?
3. There are multiple considerations to take into account when drafting a lighting ordinance including, without limitation, the following:
  - A. Possible “Red Button” issue.
  - B. Enforcement. I recommend the code enforcement approach that we used in the graffiti regulations thereby making violative exterior lighting a public nuisance.
  - C. Enforcement is a nighttime matter.
  - D. Because we are dealing with the science of light, compliance with standards must be measured with photometers and the “reasonable person standard” is not applicable.
  - E. To survive a legal challenge to a cited violation, the use of photometers requires that: the person using the photometer has a reasonable basis to believe that the technology, when properly used, can provide reliable information and that the person using the photometer used it correctly.
  - F. To paraphrase a popular idiom, “It doesn’t take a judge to see all of the legal issues that can arise under that standard.” Issues which have to be taken into account at the commencement of regulation include, for example, which meter to purchase and the provision of any necessary training for its proper use.
4. Commissioner Garceau’s draft is a good starting point and offers guidance on the scope of how the Town may want to regulate exterior lighting. This approach needs to be refined, specified, and translated into a legal document. This will not be a routine assignment.
5. Once I begin drafting, I anticipate additional matters requiring PZC consensus.

### RECOMMENDATION:

1. **May Meeting: Review Commissioner Garceau’s draft and obtain PZC general consensus on its proposed regulatory approach and scope.**
2. **June Meeting: Review JEE initial draft of proposed text amendments and obtain PZC consensus on specific issues.**
3. **July Meeting: PZC’s review of and recommendation to Council on final draft and adoption of consistency statement.**

May 6, 2020 PZC



	A	B	
1	<b>Business Zoning</b>	<b>Residential Zoning</b>	
2	Tattoo Parlor	Barber Shops	
3	Vaping Stores	Hair Saloon	
4	Adult Entertainment/Publications/Escorts	Beach Chair and Umbrella Rentals	
5	Fast Food Restaurants/Drive Throughs	Surfboard Sales	
6	Billboards	Restaurants/Coffee Shops	
7	Weapons/ammunitions	Grocery/Quickly Mart Stores	
8	Selling of Fireworks	Realtor Offices	
9	Gambling/OTB/Sport	Financial Advisory Offices (Accounting/CPA/Planing)	
10	Pawn Shops	For Profit: Auto Detailing Auto Repair Golf Cart Repair Surfboard Repair/Maintenance	
11	Flea Markets	Sell of Fireworks	
12		Gambling	
13		FLea Markets (Periodic short term yard sales are OK)	
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