THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: November 9, 2021

Subject: Revisions to City Code sections per N.C. Session Law 2021-138 and other Code updates

Staff Resource(s): John Maddux, Deputy City Attorney

Action Requested: Adopt revisions to City Code

Background:

- Per new state legislation, effective December 1, 2021, certain types of city ordinances may no longer be punished as misdemeanors or infractions, and all other ordinances may be enforced as a misdemeanor or infraction "if the city specifies such in the ordinance."
- The Asheville City Code contains numerous sections that do not specify a penalty "in the ordinance," but instead rely on a catch-all provision that punishes violations as a misdemeanor if another penalty is not specified.
- Many of these provisions, absent revision, would very likely be unenforceable if not revised before December 1.
- The City Attorney's Office has reviewed the Code and identified provisions that require revision to remain enforceable.
- In addition, it has identified other portions of the Code that are obsolete, or otherwise need revision due to changes to state law, case law, or changes in the City's structure since those ordinances passed.

Pro(s):

- Ensures numerous portions of the City Code will remain enforceable after December 1.
- Eliminates and updates obsolete and/or outdated provisions of City Code.

Con(s):

- None

Fiscal Impact:

- None

Suggested Motion:

- Motion to approve ordinance updating various provisions of the City Code to comply with Session Law 2021-138 and making other revisions as suggested by City Attorney's Office.

Attachment(s)

- Ordinance
- Appendix A

ORDINANCE NO._____

ORDINANCE AMENDING AND REVISING PORTIONS OF CITY CODE PER N.C. SESSION LAW 2021-138 AND MAKING ADDITIONAL UPDATES AND CHANGES

WHEREAS, North Carolina municipalities may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances; and

WHEREAS, N.C. Gen. Stat § 160A-175 provides that, unless the City Council otherwise provides, violation of a city ordinance is a misdemeanor or infraction as provided by N.C. Gen. Stat. § 14-4; and

WHEREAS, per N.C. Session Law 2021-138, effective December 1, 2021, certain ordinances may no longer be enforced as a misdemeanor or infraction, and all other ordinances may only be enforced as a misdemeanor or infraction "if the city specifies such in the ordinance; and

WHEREAS, the Asheville City Code contains numerous sections that do not specify a penalty "in the ordinance," but were previously punishable as a misdemeanor per Section 1-5 which provides "violations of all provisions, unless otherwise specifically provided in this code . . . shall be a misdemeanor and punishable as provided by N. C. Gen. Stat. sec. 14-4"; and

WHEREAS, the City Attorney's Office has reviewed the Code of Ordinances and identified those sections that, after December 1, 2021 may not be enforced as a misdemeanor or infraction, as well as those sections that require revision to remain enforceable; and

WHEREAS, other sections and provisions of the City Code, such as sections pertaining to the issuance of privilege licenses, have been rendered obsolete or unenforceable by legislation and case law, and are in need of repeal or revision.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

(1) The following sections of the Code of Ordinances of the City of Asheville are hereby repealed:

a. 1-9, 2-2, 2-165, 2-166, 2-167, 2-226, 2-227, 2-228, 2-229, 2-230, 3-4, 3-8, 3-9, 3-10, 3-12, 3-13, 3-20, 3-30, 3-38, 3-51, 4-4, 4-157, 4-190, 4-220, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 6-2, 7-18-2, 7-18-4, Chapter 9 Article 1 except Sections 9-36 and 9-37, Sections 9-46 through 9-180, 9-204, 9-206, 9-207, 9-218, 10-29, 10-30, 10-31, 10-43, 11-1, 11-2, 11-4, 11-6, 11-7, 11-9, 11-10, 11-14, 12-28, 12-29, 12-30, 12-31, 12-32, 12-33, 12-34, 12-35, 12-36, 12-37, 12-38, 12-39, 12-40, 12-41, 12-42, 12-51, 12-52, 12-53, 13-3, 13-4, 13-5, 16-2, 16-5, 16-97, 12-114, 16-115, 16-116, 16-117, 16-142,

16-145, 16-179, 19-4, 19-5, 19-6, 19-7, 19-8, 19-13, 19-36, 19-37, 19-38, 19-39, 19-40, 19-41, 19-42, 19-43, 19-44, 19-45, 19-46, 19-47, 19-49, 19-50, 19-51, 19-52, 19-53, 19-54, 19-55, 19-56, 19-57, 19-58, 19-59, 19-61, 19-82, 19-84, 19-85, 19-86, 19-87, 19-111, 19-136, 19-141, 19-142, 19-146, 19-147, 19-168, 19-169, 19-186, 19-201, 19-228, 19-229, 19-230, 19-231, 19-232, 19-234, 19-286.

(2) The City Council re-adopts the above-cited revisions to the Code of Ordinances of the City of Asheville with the revisions contained in Appendix A.

(3) The City Clerk is authorized to renumber and retitle any chapter, article, division, or section, and make any other administrative changes to the Code of Ordinances, necessitated by these revisions.

Read, approved and adopted this 9th day of November, 2021.

City Clerk

Mayor

Approved as to form:

City Attorney