

ORDINANCE NO. 4119-X

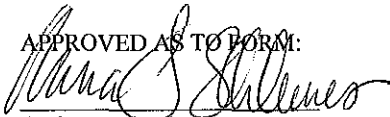
AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF THE DWELLING AT 2503 MORELAND STREET PURSUANT TO THE HOUSING CODE OF THE CITY OF CHARLOTTE AND ARTICLE 19, PART 6, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA, SAID BUILDING BEING THE PROPERTY OF VENTURE PROPERTY, LLC 977 SANTA CRUZ ROAD COCOA BEACH, FL 32931

WHEREAS, the dwelling located at 2503 Moreland Street in the City of Charlotte has been found by the Code Enforcement Official of the City of Charlotte to be in violation of the Housing Code of the City of Charlotte and the owners thereof have been ordered to demolish and remove said dwelling; and

WHEREAS, said owner(s) have failed to comply in a timely fashion.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that the Code Enforcement Official of the City of Charlotte is hereby ordered to cause the demolition and removal of the dwelling located at 2503 Moreland Street in the City of Charlotte in accordance with the Housing Code of the City of Charlotte. This Ordinance shall become effective upon its adoption.

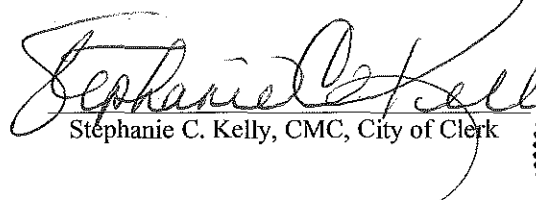
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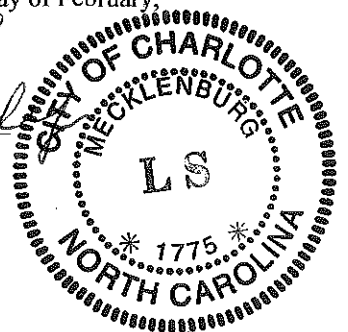
  
Assistant City Attorney

CERTIFICATION

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the city of Charlotte, North Carolina, in regular session convened on the 23<sup>rd</sup> day of February, 2009, the reference having been made in Minute Book 128, and recorded in full in Ordinance Book 56, Page 48.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

  
Stephanie C. Kelly, CMC, City of Clerk



ORDINANCE NO. 4120-X


AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF THE DWELLING AT 2113-15 EAST 8<sup>TH</sup> STREET PURSUANT TO THE HOUSING CODE OF THE CITY OF CHARLOTTE AND ARTICLE 19, PART 6, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA, SAID BUILDING BEING THE PROPERTY OF 2 LIZ ON EIGHTH, LLC 4200 PERFORMANCE ROAD CHARLOTTE, NC 28214

WHEREAS, the dwelling located at 2113-15 East 8<sup>th</sup> Street in the City of Charlotte has been found by the Code Enforcement Official of the City of Charlotte to be in violation of the Housing Code of the City of Charlotte and the owners thereof have been ordered to demolish and remove said dwelling; and

WHEREAS, said owner(s) have failed to comply in a timely fashion.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that the Code Enforcement Official of the City of Charlotte is hereby ordered to cause the demolition and removal of the dwelling located at 2113-15 East 8<sup>th</sup> Street in the City of Charlotte in accordance with the Housing Code of the City of Charlotte. This Ordinance shall become effective upon its adoption.

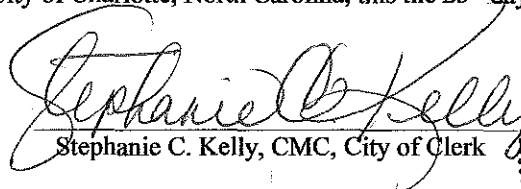
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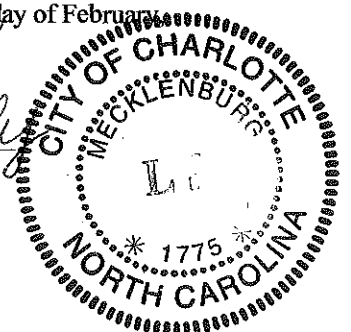
  
Assistant City Attorney

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WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

  
Stephanie C. Kelly, CMC, City of Clerk



ORDINANCE NO. 4121-X


AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF THE OUTBUILDINGS AT 5247 GRAFTON DRIVE PURSUANT TO THE HOUSING CODE OF THE CITY OF CHARLOTTE AND ARTICLE 19, PART 6, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA, SAID BUILDING BEING THE PROPERTY OF SANDRA DIANNE BROWN HILL 7908-11 CAUSEWAY DRIVE CHARLOTTE, NC 28227

WHEREAS, the outbuildings located at 5247 Grafton Drive in the City of Charlotte has been found by the Code Enforcement Official of the City of Charlotte to be in violation of the Housing Code of the City of Charlotte and the owners thereof have been ordered to demolish and remove said outbuilding; and

WHEREAS, said owner(s) have failed to comply in a timely fashion.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that the Code Enforcement Official of the City of Charlotte is hereby ordered to cause the demolition and removal of the outbuildings located at 5247 Grafton Drive in the City of Charlotte in accordance with the Housing Code of the City of Charlotte. This Ordinance shall become effective upon its adoption.

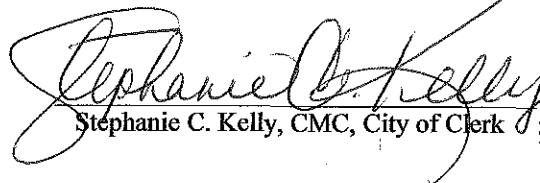
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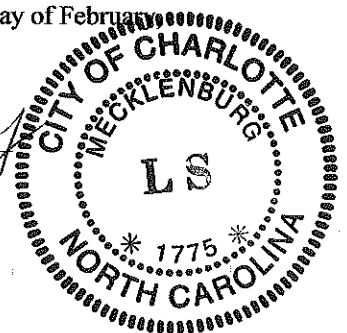
  
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WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

  
Stephanie C. Kelly, CMC, City of Clerk



ORDINANCE NO. 4122-X


AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF THE DWELLING AT 8039 PINWOOD DRIVE PURSUANT TO THE HOUSING CODE OF THE CITY OF CHARLOTTE AND ARTICLE 19, PART 6, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA, SAID BUILDING BEING THE PROPERTY OF NANCY WILKINSON SIMMONS 8039 PINWOOD DRIVE CHARLOTTE, N.C. 28269

WHEREAS, the dwelling located at 8039 Pinewood Drive in the City of Charlotte has been found by the Code Enforcement Official of the City of Charlotte to be in violation of the Housing Code of the City of Charlotte and the owners thereof have been ordered to demolish and remove said dwelling; and

WHEREAS, said owner(s) have failed to comply in a timely fashion.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that the Code Enforcement Official of the City of Charlotte is hereby ordered to cause the demolition and removal of the dwelling located at 8039 Pinewood Drive in the City of Charlotte in accordance with the Housing Code of the City of Charlotte. This Ordinance shall become effective upon its adoption.

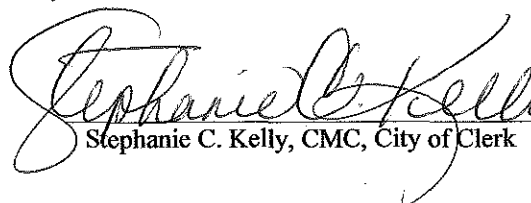
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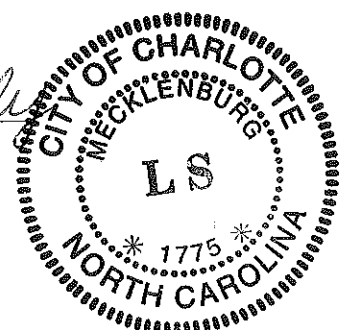
  
Assistant City Attorney

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WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

  
Stephanie C. Kelly, CMC, City of Clerk



ORDINANCE NO. 4123-X


AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF THE DWELLING AT 4925 VICTORIA AVENUE PURSUANT TO THE HOUSING CODE OF THE CITY OF CHARLOTTE AND ARTICLE 19, PART 6, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA, SAID BUILDING BEING THE PROPERTY OF TAMMY BIRMINGHAM 6542 RUMPLE ROAD CHARLOTTE, N.C. 28262

WHEREAS, the dwelling located at 4925 Victoria Avenue in the City of Charlotte has been found by the Code Enforcement Official of the City of Charlotte to be in violation of the Housing Code of the City of Charlotte and the owners thereof have been ordered to demolish and remove said dwelling; and

WHEREAS, said owner(s) have failed to comply in a timely fashion.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that the Code Enforcement Official of the City of Charlotte is hereby ordered to cause the demolition and removal of the dwelling located at 4925 Victoria Avenue in the City of Charlotte in accordance with the Housing Code of the City of Charlotte. This Ordinance shall become effective upon its adoption.

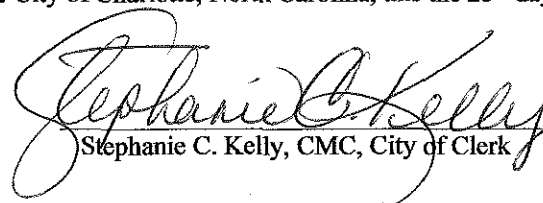
APPROVED AS TO FORM:

  
Assistant City Attorney

**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the city of Charlotte, North Carolina, in regular session convened on the 23<sup>rd</sup> day of February, 2009, the reference having been made in Minute Book 128, and recorded in full in Ordinance Book 56, Page 52.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

  
Stephanie C. Kelly, CMC, City of Clerk



ORDINANCE NO. 4124-X

O-43

AN ORDINANCE TO AMEND ORDINANCE NUMBER 3937-X, THE 2008-2009 BUDGET ORDINANCE,  
, PROVIDING AN APPROPRIATION FOR TELECOMMUNICATION EQUIPMENT AND SERVICES  
TWO ANNEXATION AREAS FOR THE JUNE 30, 2009 ANNEXATION.

BE IT ORDAINED, by the City Council of the City of Charlotte;

**Section 1.** That the sum of \$226,706 is available from the Telephone Commissions account  
(0101; 31044; 5643).

**Section 2.** That the sum of \$226,706 hereby be appropriated to the following:

Fund:	0101	
Center:	0031045	
136 - Technology Supplies & Services		89,300
176 - Temporary Help		39,000
102 - Unexpendable Appropriation		98,406

**Section 3.** All ordinances in conflict with this ordinance are hereby repealed.

**Section 4.** This ordinance shall be effective upon adoption.

Approved as to form:

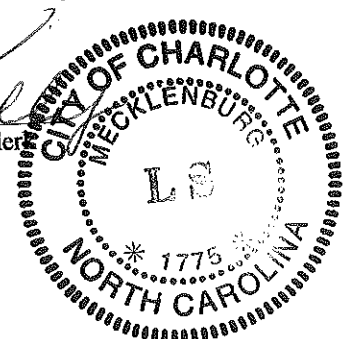
Sr. Dep. Robert E. Hay  
City Attorney

CERTIFICATION

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the city of Charlotte, North Carolina, in regular session convened on the 23<sup>rd</sup> day of February, 2009, the reference having been made in Minute Book 128, and recorded in full in Ordinance Book 56, Page 53.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

Stephanie C. Kelly  
Stephanie C. Kelly, CMC, City Clerk



ORDINANCE NO. 4125

AMENDING CHAPTER 19

**AN ORDINANCE AMENDING CHAPTER 19 OF THE CHARLOTTE CITY CODE  
ENTITLED "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES"**

**WHEREAS**, the sale and distribution of newspapers and other publications is protected by the United States Constitution and the North Carolina Constitution; and

**WHEREAS**, the public rights-of-way have historically been used to distribute newspapers and other publications; and

**WHEREAS**, heretofore the distribution of newspapers and other publications through newsracks located in the public rights-of-way in the City of Charlotte has largely been unregulated; and

**WHEREAS**, in recent years there has been a substantial increase in the number of newsracks located in the public rights-of-way that are used to distribute newspapers and other publications; and

**WHEREAS**, the unregulated placement and maintenance of newsracks in the public rights-of-way interferes with and threatens the public health, safety, and welfare, and presents aesthetic concerns, particularly in the Center City portion of the City; and

**WHEREAS**, through narrowly tailored time, place, and manner regulations designed to serve significant governmental interests and that leave open reasonable alternative avenues of communication, an appropriate balance may be struck between: (i) the rights of publishers to distribute newspapers and other publications and citizens to obtain newspapers and other publications through and from newsracks located in the public rights-of-way; and (ii) the protection of the public health, safety, and welfare.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Charlotte, North Carolina, that:

**Section 1.** Chapter 19 of the Charlotte City Code is amended by adding a new Article XIV to read as follows:

**“ARTICLE XIV. Newsracks.**

**Sec. 19-351. 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:

*Modular newsrack* means a newsrack that contains multiple separate enclosed compartments to accommodate at any one time the display and sale or distribution of multiple distinct and separate newspapers, magazines, periodicals or other publications.

*Newsrack* means a self-service or coin operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution newspapers, magazines, periodicals or other publications to the public.

*Publisher* means the person who publishes a newspaper, magazine, periodical or other publication that is displayed and offered for sale or distribution in a newsrack.

*Sidewalk* means that portion of the street right-of-way which is improved and designated for the use of pedestrians.

**Sec. 19-352. Scope of regulation.**

This article applies to newsracks located in public street rights-of-way. Newsracks located on private property, or on other governmentally owned or controlled property including, but not limited to, public transit facilities, are not subject to regulation under this article.

**Sec. 19-353. Publisher registration.**

(a) Prior to placing, or permitting the placement of a newsrack on a sidewalk, the Publisher shall register with the City by providing the following information:

- (i) name, mailing address, telephone number, and e-mail address of the Publisher and, if the Publisher is not located in the City of Charlotte, a designated agent located in the City of Charlotte; and
- (ii) name and frequency of publication of the newspapers, magazines, periodicals, or other publications to be sold or distributed from the newsracks.

(b) A Publisher shall update registration information required to be provided pursuant to subsection (a) within five days of any change of information.

(c) It shall be unlawful for any person to violate any provision of this section.



**Sec. 19-354. Maintenance.**

- (a) Newsracks must at all times be maintained in a neat and clean condition and in good repair.
- (b) It shall be unlawful for any person to violate any provision of this section.

**Sec. 19-355. Locational restrictions.**

- (a) No person shall place, install, or maintain, or permit the placement, installation, or maintenance of a newsrack in the public right-of-way:
  - (i) other than on a sidewalk;
  - (ii) within twenty-four inches of the back of curb or, if there is no curb, within twenty-four inches of the edge of the street pavement;
  - (iii) at a location that leaves less than forty-eight inches of clear passage along the sidewalk for pedestrians;
  - (iv) within thirty feet of the ballast curb line of a railroad or light rail track;
  - (v) if on the street side of a sidewalk, within ten feet of a sign that demarks a public transportation stop;
  - (vi) within four feet of a fire hydrant;
  - (vii) on or within four feet of a driveway, crosswalk, or crosswalk extension;
  - (viii) if on the street side of a sidewalk within municipal service districts 1, 2, 3, and 4, within the limits of a loading zone; or
  - (ix) at a location that interferes with or impairs the sightline of drivers at intersections.

Notwithstanding the foregoing, the City may approve locations that do not comply with these restrictions when conditions warrant.

- (b) Newsracks shall not be bolted or otherwise fixed to the ground or tied, chained, or otherwise fixed to a tree, traffic control device, sign, bench, bus shelter, parking meter, or pole. Newsracks may be chained or otherwise connected to each other for security purposes.
- (c) It shall be unlawful for any person to violate any provision of this section.

**Sec. 19-356. Center City Modular Newsrack Zone.**

- (a) The city manager is authorized to establish a Center City Modular Newsrack Zone in which the City will install one or more modular newsracks, and to amend the boundaries of such zone. All portions of the Center City Modular Newsrack Zone must be within municipal service district 3.
- (b) The director/engineer is authorized and directed to develop regulations for assigning spaces for rent within a modular newsrack when demand for available spaces

warrants such assignment. The regulations shall differentiate between paid and unpaid publications and shall:

- (i) be content-neutral;
- (ii) allocate spaces through a lottery or similar method;
- (iii) include provisions for periodically reallocating spaces; and
- (iv) provide that allocated spaces are not transferable.

(c) Other than a modular newsrack owned by the City, no person shall place, install, or maintain, or permit the placement, installation, or maintenance of a newsrack in the public right-of-way within the Center City Modular Newsrack Zone.

(d) It shall be unlawful for any person to violate any provision of this section.

**Sec. 19-357. Miscellaneous.**

(a) The City may order the removal of newsracks located in public street rights-of-way within specified areas of the City for special events or other anticipated mass gatherings when the Charlotte Mecklenburg Police Department determines that the presence of the newsracks would pose an unreasonable threat to the public health, safety, or welfare. Notice of an order issued pursuant to this subsection shall be given to each affected Publisher (or designated agent) at least ten (10) business days before said event or gathering and shall specify the period of time during which the newsracks must be removed. Notwithstanding the preceding sentence, if it is not practical to give notice at least ten business days before said event or gathering, the City shall give such advance notice as is practicable. In the event that a newsrack is not removed in accordance with an order issued pursuant to this subsection, the City may remove and store the newsrack. Upon removal, the City shall notify the Publisher that the newsrack has been removed and the location of and procedure for reclaiming the newsrack. In the event that the Publisher does not reclaim the newsrack within forty-five days of notification of removal, the newsrack will be deemed to have been abandoned and may be disposed of by the City.

(b) A newsrack or an allocated space in a modular newsrack that remains empty for a period of thirty consecutive days shall be deemed abandoned. The City may summarily remove an abandoned newsrack. Upon removal, the City shall notify the Publisher that the newsrack has been removed and the location of and procedure for reclaiming the newsrack. In the event that the Publisher does not reclaim the newsrack within forty-five days of notification of removal, the newsrack may be disposed of by the City. An abandoned space within a modular newsrack may be reallocated to another Publisher/publication.

**Sec. 19-358. Regulatory and Nonregulatory User Fees.**

The city manager is authorized to establish fees in accordance with Sec. 2-1 of the City Code for reasonable modular newsrack rental fees, newsrack material removal fees, and newsrack removal and storage fees.

**Sec. 19-359. Administration and enforcement.**

(a) This Article shall be administered and enforced by the director/engineer.

(b) The City may issue a notice of violation to a Publisher for any apparent violation of this Article. Unless the violation is willful or a repeated violation, if the newsrack is brought into compliance within fifteen (15) business days after issuance of the notice of violation, the City shall dismiss the notice of violation and no penalty shall be incurred. In the event that a newsrack is not brought into compliance within fifteen (15) business days after a notice of violation has been issued, the City may summarily remove the newsrack. Notwithstanding the preceding sentence, in the event that a newsrack poses an immediate threat to the public health or safety, the City may summarily remove the newsrack without prior notice. Upon removal, the City shall notify the Publisher that the newsrack has been removed, the reason for removal, and the location of and procedure for reclaiming the newsrack. In the event that the Publisher does not reclaim the newsrack within forty-five days of notification of removal, the newsrack will be deemed to have been abandoned and may be disposed of by the City.

(c) A violation of this Article shall not constitute a misdemeanor or infraction punishable under N.C. Gen. Stat. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in North Carolina General Statute 160A-175.

(d) Any person who: (i) willfully or repeatedly violates this article; or (ii) fails to remedy a violation within fifteen (15) business days after a notice of violation has been issued, shall be subject to a civil penalty of \$50.00.

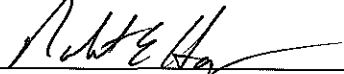
**Sec. 19-360. Appeals.**

(a) Any person who has been issued a notice of violation, been assessed a civil penalty, or whose newsrack has been removed pursuant to this article may appeal such decision within thirty (30) days after receiving notice of the enforcement decision. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the Department of Transportation. The appellant shall have the right to present evidence at said hearing.

(b) A ruling on appeal is subject to review in the Superior Court of Mecklenburg 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 thirty (30) days after notice of the decision has been sent to the appellant."

Section 2. Secs. 19-351, 19-356, and 19-358 shall become effective upon adoption.  
The remaining sections shall become effective July 1, 2009.

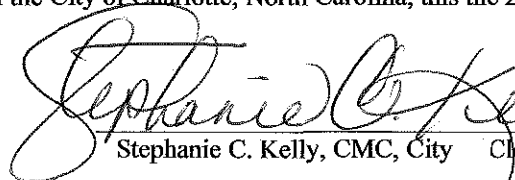
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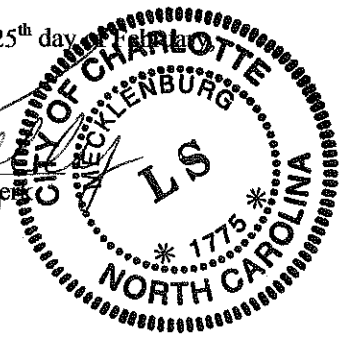
  
\_\_\_\_\_  
Sr. Dep. City Attorney

**CERTIFICATION**

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WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

  
\_\_\_\_\_  
Stephanie C. Kelly, CMC, City Clerk



ORDINANCE NO. 4126-X

AN ORDINANCE LEVYING A TAX ON GROSS RECEIPTS DERIVED  
FROM SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

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WHEREAS, the North Carolina General Assembly has ratified Senate Bill 1852, signed into law as Session Law 2008-144 (S.L. 2008-144); and

WHEREAS, this act repealed the property tax on certain Heavy Equipment leased or rented under short-term leases or rentals and authorized cities and towns to replace the lost tax revenue through enactment of a local tax on gross receipts derived from short-term leases or rentals affecting certain Heavy Equipment.

NOW, THEREFORE, BE IT ORDAINED by the Charlotte City Council that:

**SECTION 1. Definitions.** The following definitions shall apply to this Ordinance:

“Customer” shall mean any person that leases or rents Heavy Equipment on a short-term lease or rental basis.

“General Statutes” shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised or superseded.

“Gross receipts” shall mean the total lease or rental price charged to a customer for the short term lease or rental of Heavy Equipment, excluding sales taxes and excluding the taxes imposed by this Ordinance.

“Lease or rental” shall mean a transfer, for consideration, of the use but not the ownership of the Heavy Equipment to another for a period of time.

“Person” shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

“Short-term lease or rental” shall mean any lease or rental, whether written or verbal, which is made to the same person for a period of less than 365 continuous days.

“Tax Collector” shall mean the Mecklenburg County Director of Revenue Collections.

“Taxpayer” shall mean any person liable for the collection, reporting and payment of the taxes imposed by this Ordinance.

“Heavy Equipment ” shall mean the following:

Earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and meets any of the descriptions listed below in this subdivision. The term includes an attachment for heavy equipment, regardless of the weight of the attachment.

- a. It is a self-propelled vehicle that is not designed to be driven on a highway.
- b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

**SECTION 2.** Levy of Tax. A tax is hereby imposed and levied in an amount equal to eight-tenths of one percent (0.8% ) of the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail; provided that the place of business from which the Heavy Equipment is delivered is located in this City. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under N.C.G.S. 105-163.010. The tax authorized by this ordinance applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2).

**SECTION 3.** Administration. The Tax Collector shall administer and collect the taxes levied herein from every person engaged in the business of short term leasing or rental of Heavy Equipment, and the Tax Collector may promulgate additional rules and regulations necessary for implementation of the taxes. In addition to the provisions herein, the levy and collection of the taxes herein imposed shall be administered in the same manner as the sales and use tax as provided in Articles 5 and 9, Subchapter I of Chapter 105 of the General Statutes. In the event a change in the General Statutes relating to any provisions in this Ordinance is made by the State Legislature, such change shall be made applicable in this Ordinance without a formal adoption thereof by the City Council.

**SECTION 4.** Collection. Every person engaged in the business of the short-term lease or rental of Heavy Equipment to customers shall collect at the time of the lease or rental the tax herein levied, place the tax so collected in a segregated account, and thereafter remit such tax to the Tax Collector in accordance with the provisions of this Ordinance. The taxpayer shall include a provision in each short-term lease or rental agreement stating that eight-tenths of one percent (0.8%) of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental amount and shall be shown separately on the taxpayer's records. The customer shall pay the tax to the taxpayer as trustee for and on account of the City of Charlotte. The taxpayer shall be liable for the collection thereof and for its payment to the Tax Collector, and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability. The taxes collected under this Ordinance are not subject to sales tax. The taxes collected under

this Ordinance belong to the City of Charlotte and are not subject to creditor liens against the taxpayer.

**SECTION 5. Report and Payment of Tax.** The taxes levied hereby are due and payable when a return is required to be filed. The taxpayer or the taxpayer's agent must sign the return. Returns of taxpayers are due to the Tax Collector quarterly and are due by the last day of the month following the end of the quarter. A return filed for this purpose is not a public record as defined by Section 132-1 of the General Statutes and information contained in a return may not be disclosed except as required by law.

The return may be filed by personal delivery to the Tax Collector or by United States mail. Returns submitted by mail shall be deemed to be filed as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark, or if the postmark is not affixed by the United States Postal Service, the return shall be deemed to be filed when received in the office of the Tax Collector (a return having a metered stamp does not satisfy the postmark requirement unless there is also a postmark by the United States Postal Service). The burden of proof shall be on the taxpayer to show that the return was timely filed.

**SECTION 6. Taxpayer to Keep Records.** The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this Ordinance. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be for examination at all reasonable hours during the day by the Tax Collector or his duly authorized agent.

**SECTION 7. Tax Collector to Provide Forms.** The Tax Collector shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the City of Charlotte forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

**SECTION 8. Situs.** The transaction giving rise to the tax herein levied shall be deemed to have occurred at the place of business from which the Heavy Equipment is delivered.

**SECTION 9. Assessment Procedure.** If the Tax Collector discovers that any return or tax is due from a taxpayer, the taxpayer shall be notified in writing of the failure to file and of the proposed assessment, if known by the Tax Collector. The assessment may be made on the best information of the Tax Collector. A proposed assessment is presumed to be correct. The notice shall be delivered either in person or by United States mail sent to the taxpayer's last known address. The notice is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary

within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations for a request for hearing as hereafter provided apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

A taxpayer who objects to the proposed assessment or to the requirement to file a return is entitled to a hearing upon written request within 30 days after the date the notice was mailed, or within 30 days after the date of personal delivery. If no request for a hearing is timely made, the proposed assessment becomes final without further notice.

If a taxpayer files a timely request for hearing, the Tax Collector shall set a hearing date within 90 days, and notify the taxpayer at least 10 days prior to the hearing date. Within 90 days after the hearing, the Tax Collector shall notify the taxpayer of the final decision. The taxpayer may then appeal the decision as set forth in Section 11 of this Ordinance. The Tax Collector shall have no authority to waive or compromise any interest or penalty imposed by this Ordinance.

**SECTION 10. Penalties, Interest and Remedies.** The provisions with respect to penalties, interest and remedies applicable to Subchapter VIII (Local Government Sales and Use Tax) of Chapter 105 of the General Statutes, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 thereof, shall be applicable in like manner to the tax levied and collected under this Ordinance, to the extent that the same are not inconsistent with the provisions hereof.

Without limiting the foregoing, and subject to any changes in the General Statutes with respect to penalties, interest and remedies, the following shall be applicable with respect to the levy and collection of the taxes imposed herein:

- a. Any taxpayer who fails to file a return on the date it is due, determined with regard to any extension of time for filing, shall pay a penalty equal to five percent (5%) of the amount of the tax if the failure to file is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or \$5.00, whichever is greater.
- b. Any taxpayer who fails to pay the tax levied herein when due, without intent to evade the tax, shall pay a penalty equal to ten percent (10%) of the tax, except that the penalty shall in no event be less than \$5.00.
- c. Taxes shall be payable at par or face amount if paid on or before the filing date as set forth in Section 5. Taxes paid after the filing date will be delinquent and shall be subject to interest charges. Interest shall accrue at the rate of three-fourths of one per cent ( $3/4\%$ ) a month or fraction thereof until the principal amount of the taxes, the accrued interest, and any penalties are paid.



- d. When the bank upon which any uncertified check tendered to the Tax Collector in payment of taxes, penalties or interest returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Tax Collector shall assess a penalty equal to ten per cent (10%) of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000.00).
- e. Any taxpayer who willfully attempts, or any person who aids or abets any taxpayer to attempt in any manner to evade or defeat a tax imposed herein or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.
- f. Any taxpayer required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.
- g. Any taxpayer required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times as required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.
- h. The Tax Collector shall have the remedies set forth in Sections 242 or 368 of Chapter 105 of the General Statutes in enforcing the collection of taxes imposed herein, and any other remedies authorized by law.

**SECTION 11. Appeals.** The Charlotte City Council, exercising the powers of the Secretary of Revenue in collecting sales and use taxes, designates the Mecklenburg County Manager, or his designee, to act as deputy for the purpose of compromising or forgiving for good cause shown any penalty or additional tax imposed herein, and for conducting any hearings and making decisions to determine the validity of a tax imposed by the Tax Collector. If a taxpayer claims that a tax, additional tax, penalty or interest is excessive, a notice of appeal must be filed by the taxpayer within 30 days after the final notice of the Tax Collector is mailed or personally delivered to the taxpayer as provided in Section 9 of this Ordinance. The final decision of the deputy shall be made and mailed or delivered to the taxpayer within 30 days after the hearing. The taxpayer shall pay the tax, additional tax, penalty or interest without prejudice to any defense the taxpayer has. The taxpayer may file suit for a refund in the Superior Court of Mecklenburg County pursuant to the provisions of Section 267 of Chapter 105 of the General Statutes.

**SECTION 12. Severability.** If any section, clause, or provision of this Ordinance shall be found to be invalid, the validity of the remaining sections, clauses or provisions shall not be affected thereby.

**SECTION 13. Authority.** This Ordinance is enacted pursuant to the provisions of G.S. §160A-215.2.

**SECTION 14. Effective Date.** The taxes hereby levied and imposed by this Ordinance shall become effective on July 1, 2009.

ADOPTED the \_\_\_\_\_ day of February, 2009.

Approved as to Form:

\_\_\_\_\_  
Mayor

*Robert E. Hay*  
Sr. Dep. City Attorney

**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the city of Charlotte, North Carolina, in regular session convened on the 23<sup>rd</sup> day of February, 2009, the reference having been made in Minute Book 128, and recorded in full in Ordinance Book 56, Pages (60-65).

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25<sup>th</sup> day of February, 2009.

*Stephanie C. Kelly*  
Stephanie C. Kelly, CMC, City Clerk

