

**Watauga County Ordinance to Regulate Installation and Maintenance of
Electronic Access Gates for Gated Communities**

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100.01 AUTHORITY AND PURPOSE

This ordinance is enacted pursuant to the general police powers granted to Watauga County by North Carolina Gen. Stat. §153A-121, N.C. Gen. Stat. §153A-352, and Section 503 of the 2009 North Carolina State Fire Prevention Code. The purpose of this ordinance is to establish rules and standards for the installation of electronic access gates for gated communities in order to provide for the safe and efficient ingress and egress for fire, law enforcement, and other emergency personnel.

100.02 DEFINITIONS

For the purposes of this section, the following words shall have the following meanings:

Key Box: A secure, tamperproof device with a lock operable only by a fire department, police department, or emergency services department master key, and containing building entry keys and other such devices that may be required for access in an emergency.

Gated Community: A development that is enclosed within a geographical area by restrictive gates.

Gates: A crossbar, door, or other obstructive device which is utilized for the purpose of restricting, controlling, or obstructing entry or exit by motor vehicles or pedestrians to or from a private roadway.

Ingress/Egress: The point where vehicles or pedestrians enter and exit a development.

Modifications: Any structural changes from the original configuration (new or existing), change from manual to electric, change of electronic control operation or alterations requiring a permit.

Private Streets: Internal streets that are not owned or maintained by North Carolina Department of Transportation and that are owned and maintained by an entity responsible for upkeep and maintenance, such as a homeowners association, community group, property management company, or similar organization.

100.03 REQUIREMENTS

New and existing, when applicable, gated communities shall comply with the following requirements:

- A. All streets in the gated community must be private streets.
- B. The location of the gate(s) shall comply with Section 100.04 of this ordinance and the North Carolina State Fire Prevention Code, as applicable.
- C. The gates shall be maintained in working order and inspected as needed.
- D. Gates pre-existing to the adoption of this ordinance shall not be affected by this ordinance provided they are maintained and in working order. If such gates are replaced or modified, they shall conform to the requirements of Sections 100.04, parts C through K, of this ordinance and the North Carolina State Fire Prevention Code as applicable.
- E. Applicants shall adhere to section 100.05 below regarding the process for obtaining approval for gates.

100.04 GATE DEVELOPMENT SPECIFICS

- A. Entrance gates shall be located a minimum of 40' from the adjacent public road right-of-way to allow for emergency vehicle clearance at entry.
- B. Combined entry and exit ways shall provide a minimum unobstructed width of twenty (20) feet. Entry and exit ways separated by landscape medians, guard houses, or other obstructions shall provide a minimum unobstructed width of twelve (12) feet. Entry and exit ways shall have a minimum unobstructed vertical clearance of not less than thirteen feet six inches (13'6").
- C. It shall be determined if the gates are to be manual or electrical in operation. All electrical vehicular gates shall be provided with access control using a Radio Transceiver for public safety and authorized users. This transceiver will allow emergency vehicles to open the gate from a mobile or portable radio, and must be pre-approved by Watauga County.
- D. All electrical vehicular gates shall be provided with a fail-open device in the event of power failures unless secondary power is provide by battery back-up or generator. During a power failure, the gates will open and remain open. These devices should restore the gate(s) to the closed position after the power is restored. Any residential gated communities consisting of three (3) or less dwelling units are not subject to this requirement.
- E. Gates need to be opened for appropriate personnel to enter the community during an emergency. A fire service recognized/approved dual key activating switch or padlock shall be installed to allow emergency personnel access through vehicular gates.
- F. An approved dual key lock box containing cards, keys, pass codes and operating instructions shall be provided at each entrance gate.
- G. Gates shall be designed so that when fully opened do not obstruct the path of travel for vehicles or pedestrians, whether emergency and non-emergency. Gates shall remain fully open during an emergency event, when activated by responding agency, until reset. A 'Hold Open' code must be included in design and functioning of the gate.
- H. If there are two or more gates in any single development, all gates shall be operated in the same fashion.

- I. Gate activation shall not be altered or placed out of service without prior notification to the Watauga County Fire Marshal's Office, Watauga County Planning and Inspections Department and the Local Fire Department.
- J. Each entrance gate shall be provided with an "override" feature to allow the gate(s) to remain open so that multiple fire apparatus can enter without having to wait for intermittent opening of the gate(s).
- K. Each entrance gate shall be equipped with a manual override feature so as to permit opening during power failures or other emergency.

100.05 APPLICATION AND APPROVAL PROCESS

- A. The applicant shall submit a detailed plan, including but not limited to, scaled drawings showing the location of the gates, turn radius, dimensions of the gates, pavement, sidewalks, curbs, etc. Information such as topography lines, vegetation, site triangles, etc. shall also be included with the submittal.
- B. The applicant shall submit these plans for review by the Planning & Inspections Department, who shall forward the plans to the Sheriff's Department, Fire Marshal's Office, EMS, and Local Fire Department for approval.
- C. The Department of Planning & Inspections shall verify approval by the agencies listed in Section 100.05 (b) of the gate plan prior to issuance of a permit.
- D. All property owners shall notify the Watauga County E911 Department of any gate access code changes prior to such changes taking effect.
- E. All gated communities applying for a permit to install a gate shall acknowledge that if the affected properties gate fails to operate in its intended operational capacity, and such failure results in damage to the gate or constitutes the responding emergency agency to alter normal entrance procedures, the responding agency, mutual aid departments and Watauga County shall not be held liable for damages incurred.

100.06 MAINTENANCE

Gates subject to this ordinance shall be kept in their original working order and shall be repaired and/or replaced in the event they are disabled and/or damaged. It shall not be the responsibility of the County to maintain these gates. Gates subject to this ordinance shall be monitored annually by the Local Fire Department and verified by the Watauga County Fire Marshal's Office every three (3) years of their operation or as deemed appropriate by the Watauga County Fire Marshal's Office.

100.07 MODIFICATIONS

Any gate (new or existing) altered outside the scope of their original installation and/or permitting, will be considered a modification. Notification and plans for modification shall be submitted to the Watauga County Office of Planning and Inspections for review and decision upon compliance with this ordinance.

100.08 VIOLATIONS

A. It shall be unlawful for any person to construct, install, or maintain any blocking device, such as a gate or any other type of barrier without first review and approval by Watauga County.

B. If it is found that a gated community is in violation of this ordinance, the property owners association shall be notified of said violation in writing by the Watauga County Fire Marshal's Office. Failure to remedy the violation within seven (7) business days shall subject the violator to remedies as authorized under G. S. 153A-123 and G.S. 143-139. Civil penalties shall be imposed in the amount of \$200.00 per day until the violation has been remedied. In addition to the civil penalty, or in the alternative, this ordinance may be enforced by injunction and order of abatement in the General Court of Justice. Each day's continuing violation of this ordinance is a separate and distinct offense.

C. In the event the gated community does not have a property owners association or the association is defunct, insolvent, or otherwise non-responsive to a notice of violation, the county may pursue each individual lot owner for enforcement of the remedies as set forth above.

100.09 APPEAL PROCEDURE

The Watauga County Board of Adjustment shall hear all appeals which may be taken by an owner or other party in interest from any decision or order of the Watauga County Office charged with enforcement of this Ordinance.

The appeal shall be taken within thirty days from receipt of actual or constructive notice of the decision by the Watauga County Office of Planning and Inspections by filing with the Watauga County Director of Planning and Inspections a notice of appeal, which shall specify the grounds upon which the appeal is based. Upon filing of any notice of appeal, the Watauga County Director of Planning and Inspections shall schedule the matter for hearing in accordance with the rules of procedure for the Watauga County Board of Adjustment.

When any appeal is from a decision of the Watauga County Office of Planning and Inspections requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing of the Board, unless the Director of the Watauga County Office of Planning and Inspections certifies to the Board, after the notice of appeal is filed, that by reason of the facts stated in an affidavit (a copy of which shall be furnished to the petitioner) a suspension of the requirement would, in his or her opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by a court of record in accordance with the requirements of Rule 65 of the North Carolina Rules of Civil Procedure.

The Watauga County Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

The Board shall fix a reasonable time for the hearing of appeals, shall give due notice to all the parties and shall render its decision within forty-five days of the conclusion of the evidence presented to it. Any party may appear in person

or by agent or by attorney. The Board may reverse, affirm, in whole or in part, or may modify the decision or order appealed. The concurring vote of a majority of the members of the Board shall be necessary to reverse or modify any decision or order appealed under this Ordinance.

The Board shall have the power also in passing upon appeals in any case where there are unnecessary hardships in the way of carrying out the strict letter of this code, to adapt the application of the code to the necessities of the case to the end that the spirit, purpose and intent of the code shall be observed, public safety is secured, and substantial justice achieved. The concurring vote of four-fifths of the Board shall be necessary to grant a variance.

Every quasi-judicial decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted in the Watauga County Superior Court within 30 days after the written decision of the Board is filed or after a copy thereof is delivered to the appealing party, whichever is later. The decision of the Board may be delivered to the aggrieved party either by hand delivery or by any method authorized by the State Rules of Civil Procedure.

100.10 EFFECTIVE DATE

This Ordinance shall become effective upon its ratification and adoption by the Watauga County Board of Commissioners.

READ, CONSIDERED, PASSED, AND APPROVED at the regular meeting of the Board of Commissioners for Watauga County at which a quorum was present and which was held the 18th day of September, 2012.

By: _____
Nathan A. Miller, Chairman
Watauga County Board of Commissioners

Attest:

Anita Fogle, Clerk to the Board (SEAL)