

TITLE I: USE OF THE CODE AND PENALTIES

Chapter

10. GENERAL PROVISIONS

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§ 10.01 SHORT TITLE.

The provisions embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, Town of Lake Lure, North Carolina," and may be so cited.

Statutory reference:

As to admission of code into evidence, see G.S. 160A-79

§ 10.02 DEFINITIONS.

For the purpose of this code the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"COUNCIL." The legislative body of the town.

"COUNTY." The County of Rutherford, in the State of North Carolina, except as otherwise provided.

"MAYOR." The Mayor of the town.

"MONTH." A calendar month.

"OATH." An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in certain cases the words swear and sworn shall be equivalent to the words affirm and affirmed.

"OFFICIALS." "BOARDS." and "COMMISSIONS." Whenever reference is made to "OFFICIALS." "BOARDS." and "COMMISSIONS." by title only, they shall be deemed to refer to the officials, boards, and commissions of the Town of Lake Lure.

"OR" and "AND." "OR" may be read "AND" and "AND" may be read "OR" if the sense requires it.

"OWNER." When applied to building or land, shall include any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety, of the whole or a part of the building or land.

"PERSON." A corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual.

"PERSONAL PROPERTY." Every species of property except real property as herein defined.

"PRECEDING" and "FOLLOWING." Next before and next after respectively.

"PROPERTY." Real and personal property.

"REAL PROPERTY." Lands, tenements, and hereditaments.

"SIDEWALK." Any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

"SIGNATURE" or "SUBSCRIPTION." Includes a mark when the person cannot write.

"STATE." The State of North Carolina.

"STREET." Any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, or bridge and the approaches thereto within the town.

"TENANT" or "OCCUPANT." When applied to a building or land shall include any person who occupies the whole or a part of the building or land whether alone or with others.

"TOWN," "CITY," "MUNICIPAL CORPORATION," or "MUNICIPALITY." Shall mean the Town of Lake Lure, in Rutherford County, North Carolina, except as otherwise provided.

"WRITING" and "WRITTEN." Printing and any other mode of representing words and letters.

"YEAR." A calendar year.

§ 10.03 RULES OF CONSTRUCTION.

(A) The time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that shall be excluded.

(B) Gender. Words importing the masculine gender shall include the feminine and neuter.

(C) Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving authority to a majority of those persons or officers.

(D) Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and any others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to that meaning.

(E) Number. Words used in the singular include the plural and the plural includes the singular number.

(F) Plural, singular. Words importing the singular shall include the plural, and words importing the plural shall include the singular.

(G) Statute references. The reference "G.S." shall be construed to refer to the General Statutes of North Carolina.

(H) Time. Words used in the past or present tense include the future as well as the past and the present.

(I) Title of office. The title of any office shall be construed to include the words, "of the Town of Lake Lure, North Carolina."

Statutory reference:

Computation of time, see G.S. 1-593

Rules of construction, see G.S. 12-3

§ 10.04 CONTINUATION OF EXISTING ORDINANCES.

The provisions appearing in this code, so far as they are the same as ordinances adopted prior to this code and included herein, shall be considered as continuations thereof and not as new enactments.

§ 10.05 SECTION HEADINGS.

The underlined headings of the several sections of this code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of these sections nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of the sections, including the catchlines, are amended or reenacted.

§ 10.06 REPEAL, EXPIRATION, AND REVIVAL OF ORDINANCES.

(A) The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding commenced before the repeal took effect or the ordinance expired.

(B) When an ordinance which repeals another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

§ 10.07 SEVERABILITY.

It is declared to be the intention of the Council that the sections, paragraphs, sentences, clauses, and phrases of this code are severable and if any phrase, clause, sentence, paragraph, or section of this code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, the unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this code since the same would have been enacted by the Council without the incorporation in this code of an unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

§ 10.08 AMENDMENTS TO CODE; AMENDATORY LANGUAGE.

(A) All ordinances passed subsequent to this code of ordinances which amend, repeal or in any way affect this code of ordinances, may be numbered in accordance with the numbering system of this code and printed for inclusion herein. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted, in the case of repeal, shall be prima facie evidence of subsequent ordinances until a time that this code of ordinances and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the Council.

(B) Amendments to any of the provisions of this code may be made by amending these provisions by specific reference to the section number of this code in the following or similar language: "That section _____ of the Code of Ordinances, Town of Lake Lure, is hereby amended to read as follows: _____." The new provisions shall then be set out in full as desired.

(C) In the event a new section not heretofore existing in the code is to be added, the following or similar language may be used: "That the Code of Ordinances, Town of Lake Lure is hereby amended by adding a section to be numbered _____, which section reads as follows: _____." The new provisions shall then be set out in full as desired.

§ 10.09 DAMAGING ORDINANCES.

No person shall tear or deface any of the town ordinances.
Penalty, see § 10.99

§ 10.99 ENFORCEMENT

(A) Administration.

- (1) Unless a greater amount is specified herein, an act constituting a violation of the provisions of this Code or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$100.00, which includes administrative fees. Each day any single violation continues shall be a separate violation. Unless expressly stated otherwise in a chapter or appendix, a violation of this Code shall not constitute a misdemeanor pursuant to N.C.G.S. 14-4. If the offender fails to correct this violation within ten days after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.
- (2) In addition to the civil penalties set out above, any provision of any Town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.
- (3) In addition to the civil penalties set out above, any provision of any Town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- (4) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the applicable Town ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for

compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

- (5) The provisions of any Town ordinance may be enforced by one, all, or a combination of the remedies authorized and prescribed by this Section.

(B) Procedures.

- (1) This paragraph (B) sets forth the procedures to be followed in enforcing the provisions of the Code of Ordinances. They shall be utilized unless an individual ordinance codified herein has different procedures, in which event the procedures of the individual ordinance shall be followed.
- (2) Unless otherwise provided by a specific provision of any Town ordinance, upon determination of a violation of any section of a Town ordinance, the enforcement official of the Town of Lake Lure shall cause a warning citation to be issued to the violator. Such warning citation shall be issued either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.
- (3) An appeal from a warning citation shall be taken within fifteen (15) days from the date of said warning citation by filing with the enforcement official and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Except in any case where the ordinance violated, which is the subject of the warning citation, specifically grants to the Board of Adjustment other powers in considering appeals and such appeal is applied for, the Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of an ordinance, in the factual situation as it relates to the application of an ordinance or both.

- (4) Where the enforcement official of the Town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.
- (5) Upon failure of the violator to obey the warning citation, a civil citation may be issued by the enforcement official, either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the Town Manager of the Town of Lake Lure, or designee, within fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.
- (6) If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein, the Town of Lake Lure may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

(§ 10.99 amended 03-13-12)