

PART II

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Lincolnton, North Carolina" and may be so cited. Such Code may also be cited "Lincolnton Code" or "City Code."

State law references—Adoption of code of ordinances, G.S. 160A-77; admission of code in evidence, G.S. 160A-79.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed unless inconsistent with the manifest intent of the city council or the context clearly requires otherwise.

City. The words "the city" or "this city" shall mean the City of Lincolnton, North Carolina.

Computation of time. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day is Saturday, Sunday or a legal holiday, that day shall be excluded.

State law reference—Computation of time, G.S. 1-593.

Council, city council, governing body. The terms "council," "city council" and "governing body" shall be construed as if the words "of Lincolnton, North Carolina," followed them. This rule shall also apply as to any official, officer, or employee of the city, or any department or other body, of the city government.

County. The word "county" shall mean the County of Lincoln, in the State of North Carolina.

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

Joint authority. All words giving a joint authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.

Month. The word "month" shall mean a calendar month.

Number. Words used in the singular include the plural, and words used in the plural include the singular.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Owner. The word "owner," applied to a 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 such building or land.

Person. The word "person" shall include a corporation, firm, partnership, association, organization and any other group acting as a unit as well as an individual.

Personal property. The words "personal property" shall include every species of property except real property as herein defined.

Preceding, following. The words "preceding" and "following" shall mean next before and next after respectively.

Property. The word "property" shall include real and personal property.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curblines and the adjacent property line intended for the use of pedestrians.

Signature, subscription. The word "signature" or the word "subscription" shall include a mark when the person cannot write.

State. The word "state" shall mean the State of North Carolina.

Street. The word "street" shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, or bridge and the approaches thereto within the city.

Tenant. The word "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or a part of such building or land whether alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Writing. The words "writing" and "written" shall include printing and any other mode of representing letters and numerals.

Year. The word "year" shall mean a calendar year.

State law references—Definitions and rules for construction of statutes, G.S. 12-3; definitions and rules of statutory construction relating to municipalities, G.S. 160A-1.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall be deemed or taken neither to be titles of the sections nor as any part thereof; nor, unless expressly so provided, shall they be so deemed when any of the sections, including the catchlines, are amended or reenacted.

Sec. 1-4. Severability of parts of Code.

It is hereby declared to be the intention of the city 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, such 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 any such invalid phrase, clause, sentence, paragraph or section.

Sec. 1-5. Effect of repeal or expiration of ordinances.

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.

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

(Code 1976, § 1.4)

State law reference—Repeal of statute not to affect actions, G.S. 12-2.

Sec. 1-6. Code does not affect prior offenses, rights, etc.

Nothing in this Code or an ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, or any prosecution, suit or proceeding pending or any judgment rendered, on or before the effective date of this Code.

Sec. 1-7. Altering Code.

It shall be unlawful for any person in the city to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby. Any person violating this section shall be punished as provided in section 1-8 hereof.

Cross reference—Offenses and miscellaneous provisions, Ch. 10.

State law references—Violation of ordinances constitutes a misdemeanor punishable by fine not exceeding \$50.00 or imprisonment for not exceeding 30 days, G.S. 14-4; authority of city to enforce ordinances, G.S. 160A-175; abatement of health nuisances, G.S. 160A-193.

Sec. 1-8. General penalty; enforcement of ordinances; continuing violations.

(a) Unless otherwise specifically provided, violation of any provision of this Code or any other ordinance shall be a misdemeanor or an infraction as the case may be, as provided by section 14-4 of the General Statutes of North Carolina, and punishable as provided therein.

(b) Violation of any provision of this Code or any other ordinance shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if

the offender does not pay the penalty within a period of time prescribed by the court after such offender has been cited for such violation.

(c) Any provision of this Code or any other 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 city for equitable relief that there is an adequate remedy at law.

(d) Any provision of this Code or any other ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the city may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and 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. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. 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 property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Code or such 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, such defendant may be cited for contempt, and the city may execute the order of abatement. The city 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 judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(e) The provisions of this Code and any other ordinance may be enforced by any one (1), all or a combination of the remedies authorized and prescribed by this section.

(f) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other ordinance shall be a separate and distinct offense.

State law references—Authority, G.S. 160A-175; abatement of health nuisances, G.S. 160A-193.

Sec. 1-9. Penalty not exclusive.

(a) The imposition of a penalty under the provisions of this Code shall not prevent the revocation or suspension of any license, franchise or permit issued or granted hereunder.

(b) In the event any violation of this Code is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the city in addition to the imposition of a fine or imprisonment.

Sec. 1-10. Liability for violations by corporations and other associations.

(a) Any violation of this Code by any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization, while acting within the scope of such officer's, agent's or other person's office or employment, shall in every case also be deemed to be a violation by such corporation, association or organization.

(b) Any officer, agent, or other person acting for or employed by any corporation or unincorporated association or organization shall be subject and liable to punishment as well as such corporation or unincorporated association or organization for the violation by it of any provisions of this Code, where such violation was the act or omission, or the result of the act, omission or order, of any such person.

Sec. 1-11. Police power extended to city property.

The police power of the city is hereby extended to include all lands and property owned or leased by the city or any agency of the city, and the general ordinances of the city shall be applicable on such land and property.

State law reference—Authority to so provide, G.S. 160A-176.

Sec. 1-12. Miscellaneous ordinances not affected by Code.

Nothing in this Code or an ordinance adopting this Code shall affect:

- (1) Any ordinance promising or guaranteeing the payment of money by or for the city or authorizing the issuance of any bond of the city or any evidence of the city's indebtedness or any contract or obligation assumed by the city;
- (2) Any ordinance granting any franchise or right;
- (3) Any ordinance appropriating funds, levying or imposing taxes or relating to an annual budget;
- (4) Any ordinance annexing territory to the city, or excluding territory from the city;
- (5) Any ordinance authorizing, providing for or otherwise relating to any specific public improvement or making any assessment therefor;
- (6) Any personnel program or social security or retirement ordinance or ordinance prescribing personnel compensation, not in conflict with this Code;
- (7) Any ordinance relative to zoning or to zoning map changes or zoning or rezoning specific property, not in conflict with this Code;
- (8) Any ordinance dedicating, accepting or approving any plat or subdivision or providing subdivision regulations, not in conflict with this Code;

- (9) Any ordinance adopted for purposes which have been consummated;
- (10) Any ordinance which is temporary, although general in effect, or special, although permanent in effect;
- (11) Any ordinance providing traffic regulations for specific areas, such as no-parking zones, stop intersections, etc., not in conflict with this Code; or
- (12) Any administrative ordinance not in conflict or inconsistent with the provisions of this Code;
- (13) Any ordinance establishing or prescribing street grades in the city;
- (14) Any ordinance enacted after September 8, 1988;

nor shall this Code or such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this Code or such ordinance; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

State law reference—Statutes affecting particular localities not repealed by General Statutes, G.S. 164-7.

Sec. 1-13. Supplementation of Code.

(a) By contract or by municipal personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the governing body. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete; the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted in the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-14. Provisions considered as continuations 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.

Sec. 1-15. Official code; maintenance.

This Code, which shall at all times be kept up to date by the city clerk, shall be the official Code of the city.

