

## CHAPTER 10: GENERAL PROVISIONS

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### **§ 10.01 TITLE OF CODE.**

This codification of ordinances by and for the municipality of Tryon, North Carolina, shall be designated as the Code of Tryon and may be so cited.

### **§ 10.02 INTERPRETATION.**

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

### **§ 10.03 APPLICATION TO FUTURE ORDINANCES.**

All provisions of Title 1 compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

### **§ 10.04 CAPTIONS.**

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

## § 10.05 DEFINITIONS.

(A) General rule. Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

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

**CODE, THIS CODE or THIS CODE OF ORDINANCES.** This municipal code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

**COUNTY.** Polk County, North Carolina.

**MAY.** The act referred to is permissive.

**MONTH.** A calendar month.

**OATH.** 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**.

**OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT.** An officer, office, employee, commission, or department of this municipality unless the context clearly requires otherwise.

**PERSON.** Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**PRECEDING or FOLLOWING.** Next before or next after, respectively.

**SHALL.** The act referred to is mandatory.

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

**STATE.** The State of North Carolina.

**SUBCHAPTER.** A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

**TOWN, MUNICIPAL CORPORATION, or MUNICIPALITY.** The Town of Tryon, North Carolina.

**WRITTEN.** Any representation of words, letters, or figures, whether by printing or otherwise.

**YEAR.** A calendar year, unless otherwise expressed; equivalent to the words **YEAR OF OUR**

**LORD.**

**§ 10.06 RULES OF INTERPRETATION.**

The construction of all ordinances of this municipality shall be by the following rules, unless such construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(A) **AND** or **OR**. Either conjunction shall include the other as if written “and/or,” if the sense requires it.

(B) Acts by assistants. When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

(C) Gender; singular and plural; tenses. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) General term. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

**§ 10.07 SEVERABILITY.**

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

**§ 10.08 REFERENCE TO OTHER SECTIONS.**

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

**§ 10.09 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this municipality exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

**§ 10.10 ERRORS AND OMISSIONS.**

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the

provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

**§ 10.11 OFFICIAL TIME.**

The official time, as established by applicable state/federal laws, shall be the official time within this municipality for the transaction of all municipal business.

**§ 10.12 REASONABLE TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

**§ 10.13 ORDINANCES REPEALED.**

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

**§ 10.14 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

**§ 10.15 EFFECTIVE DATE OF ORDINANCES.**

All ordinances passed by the Board of Commissioners requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

**§ 10.16 REPEAL OR MODIFICATION OF ORDINANCE.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoined, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

#### **§ 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

(A) If the Board of Commissioners shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of such chapter or section. In addition to such indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

#### **§ 10.18 SECTION HISTORIES; STATUTORY REFERENCES.**

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and the most recent three amending ordinances, if any, are listed following the text of the code section. Example: (Ord. 10, passed 5-13-60; Am. Ord. 15, passed 1-1-70; Am. Ord. 20, passed 1-1-80; Am. Ord. 25, passed 1-1-85)

(B) If a section of this code is derived from the previous code of ordinances of the city published in 1981 and subsequently amended, the 1981 code section number shall be indicated in the history by “(‘ 81 Code, § \_\_\_\_).”

(C) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute.  
Example: (G.S. § 160A-69) (Ord. 10, passed 1-17-80; Am. Ord. 20, passed 1-1-85).

(2) If a statutory cite is set forth as a “statutory reference” following the text of the section, this indicates that the reader should refer to that statute for further information.  
Example:

#### **§ 31.10 MAYOR.**

The Mayor shall preside at all meetings of the Board of Commissioners.  
(Ord. 10, passed 1-1-80)

***Statutory reference:***

*For the powers and duties of the Mayor, see G.S. § 160A-67*

#### **§ 10.19 ALTERING CODE.**

It shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of this code or to insert or delete pages, or any portions thereof, or to alter or tamper with such code in any manner whatsoever, except pursuant to ordinance or resolution or other official act of the Board of Commissioners, which will cause the law of the municipality to be misrepresented thereby.

( ‘ 81 Code, § 1-5) Penalty, see § 10.99

**§ 10.99. GENERAL PENALTY; CIVIL REMEDIES; ENFORCEMENT OF ORDINANCES; CONTINUING VIOLATIONS.**

(A) Unless otherwise specifically provided, violation of any provision of this Code of Ordinances or any other town ordinance shall subject the offender to the remedies provided in this section, except that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this Code adopted pursuant to such statutes, such remedies available to the town for enforcement of this Code shall be in addition to the remedies stated in this section.

(B) Violations of all provisions of this Code, unless otherwise specifically provided in this Code and/or specifically enumerated in Table IV of the Table of Special Ordinances of this volume, shall be a misdemeanor and punishable as provided by N.C. Gen. Stat. § 14-4.

(C) Violations of the provisions enumerated in Table IV of the Table of Special Ordinances of this volume shall subject the offender to a civil penalty upon the issuance of a citation for such violation as provided in this section. The civil penalty, if not paid to the town clerk within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be in the amount of \$50.00 for each violation, and each day any single violation continues shall be a separate violation. The provisions of this Code which shall subject the offender to a civil penalty are as enumerated in Table IV of the Table of Special Ordinances of this volume.

(D) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other 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.

(E) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other town 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 town 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.

(F) 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:

- (1) Buildings or other structures on the property be closed, demolished or removed;
- (2) Fixtures, furniture or other movable property be removed from buildings on the property;

- (3) Grass and weeds be cut;
- (4) Improvements or repairs be made; or
- (5) 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, 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 judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(G) The provisions of this Code and any other town ordinances may be enforced by one, all or a combination of the remedies authorized and prescribed by this section, except that any provision, the violation of which incurs a civil penalty, shall not be enforced by criminal penalties.

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

(I) Any ordinances adopted by the Board of Commissioners, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty or criminal penal provisions of this section.

(J) Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the section violated, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty. Notwithstanding the preceding provisions of this subsection, no warning citation shall be issued for infractions enumerated under:

- (1) § 72.99(A)(1) of this Code (parking);
- (2) Chapter 91 of this Code (animal control); and
- (3) §§ 94.10 and 94.11 of this Code (noise).

(K) Upon failure of the violator to obey the warning citation, or immediately upon the infractions enumerated under § 10.99(J)(1) – (3), above, a civil citation shall be issued by the appropriate official of the town and either served directly on the violator or his duly designated agent or registered agent, if a corporation, 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 town 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 such citation. The citation shall direct the violator to appear before the town clerk, located in the town hall, within 15 days of the date of the citation to pay the civil penalty or alternatively to pay the penalty 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.

(L) If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the town may institute a civil action in the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty.

(M) The town manager shall establish an appeals process for persons contesting any civil penalty issued by a town employee. Civil penalties must be appealed to the town manager or an official designated by the town manager within 15 days of the issuance of the civil citation.

(G.S. § 160A-175)

(‘ 81 Code; Am. Ord. 2006-5, passed 2-21-06; Am. Ord. 2010-02, passed 02-16-10; Am. Ord. 2010-04, passed 02-16-10)