

# GENERAL PROVISIONS

## §10.01 TITLE OF CODE.

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

## §10.02 INTERPRETATION.

Unless otherwise posted 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 I 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) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOARD.** The Town Board of the Town of Cooleemee, unless otherwise specified.

**CHARTER.** The Charter of the Town of Cooleemee, North Carolina.

**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.** Davie County, North Carolina.

**GOVERNOR.** The Governor of North Carolina.

**JOINT AUTHORITY.** All words giving a **JOINT AUTHORITY** to three or more persons or officers shall be construed as giving that authority to a majority of those persons or officers.

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

**MONTH.** A calendar month.

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

**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.

**OWNER.** Applied to any property, shall include any part owner, joint owner, tenant in common, joint tenant, or tenant by entirety, of the whole or a part of that property.

**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.

**PERSONAL PROPERTY.** Every species of property except real property.

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

**PROPERTY.** Includes real and personal property.

**REAL PROPERTY.** Includes lands, tenements, and hereditaments.

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

**SIDEWALK.** Any portion of a street between the curb line and the adjacent property line intended for use by 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, dedicated alley, lane, viaduct, bridge, and the approaches thereto within the town, and shall mean the entire width of the right-of-way between abutting property lines.

**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**.

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

**TOWN.** The Town of Cooleemee, North Carolina.

**TOWN BOARD** or **TOWN BOARD OF COMMISSIONERS.** The governing body of the Town of Cooleemee, 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 town shall be by the following rules, unless that 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, that requisition shall be satisfied by the performance of the 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, that 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 the intent, that spelling shall be corrected and that word or those 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 the error.

#### **§10.11 OFFICIAL TIME.**

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

#### **§10.12 REASONABLE TIME; COMPUTING 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 that act or the giving of that 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 legislative body 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 ORDINANCES.**

- (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, enjoyed, 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 otherwise expressly provided.

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

- (A) All ordinances passed subsequent to this code which amend, repeal, or in any way affect this code may be numbered in accordance with the numbering system hereof and printed for inclusion herein. When subsequent ordinances repeal

any chapter, section or subsection, or any portion thereof, such repealed portions may be excluded from this code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal shall be prima facie evidence of the subsequent ordinances numbered or omitted are readopted as a new code by the town.

- (B) Amendments to any of the provisions of the code shall be made by amending such provisions by specific reference to the section number of the code in language substantially similar to the following: "Section \_\_\_\_ of the Code of Ordinances, Town of Cooleemee, North Carolina, is hereby amended as follows . . . ." The new provisions shall then be set out in full as desired.
- (C) If a new section not heretofore existing in the code is to be added, language substantially similar to the following shall be used: "The Code of Ordinances, Town of Cooleemee, North Carolina, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which shall read as follows: . . . ." The new section shall then be set out in full as desired.
- (D) All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

**§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) (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-11) (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:

**§39.01 PUBLIC RECORDS AVAILABLE**

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

***Statutory reference:***

*Inspection of public records, see G.S. §§139-1 et seq.*

**§10.99 GENERAL PENALTY.**

- (A) Unless otherwise provided herein, each violation of this code or any other town ordinance shall constitute a misdemeanor, except as otherwise provided by statute, and violations of such provisions of any town ordinance shall be punished by fine or imprisonment as provided by law. Each day any violation of any town ordinance shall continue shall constitute a separate offense, except as may be specifically provided.
- (B) Violations of any town ordinance shall constitute either a misdemeanor or, at the election of the town, shall subject the offender to a civil penalty upon the issuance of a citation for the violation as hereinafter provided. The civil penalty, if not paid to the Town of Cooleemee 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 any town ordinance, civil penalties shall be in the amount of \$50 for each violation and each day any single violation continues shall be a separate violation.

- (C) 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.

- (D) 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 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.

- (E) 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 or she 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 the 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.

- (F) The provisions of any town ordinance may be enforced by one, all, or a combination of the remedies authorized and prescribed by this section.
- (G) Any ordinances hereafter adopted by the Board of Commissioners of the Town of Cooleemee, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty and/or criminal penal provisions of this section.
- (H) Upon determination of a violation of any section of any town ordinance, the penalty for which is a civil penalty, the enforcement official of the Town of Cooleemee shall cause a warning citation to be issued to the violator. 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 may be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.
- (I) An appeal from a warning citation shall be taken within ten days from the date of the warning citation to the Board of Adjustment. 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.
- (J) 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.
- (K) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the enforcement official of the Town of Cooleemee and either served directly on the violator, his or her 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 Davie County or obtained from the violator at the base of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of the citation. The citation shall direct the violator to appear before the Town Clerk of the Town of Cooleemee, or designee, within 15 days of the date of 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.
- (L) If the violator fails to respond to a citation within 15 days of its issuance, and pay the penalty prescribed therein, the Town of Cooleemee 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.
- (M) The existing ordinances of the Town of Cooleemee, a violation of which shall subject the

offender to civil penalties an/or criminal penalties or both, are as follows:

- (1) Code of Ordinances
- (2) Subdivision Ordinance
- (3) Zoning Ordinance

(G.S §14-4) (Ord. passed 5-6-02; Am. Ord. passed 1-24-06)

***Statutory reference:***

*Enforcement of ordinances, see G.S. §160A-175*