

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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§ 10.01 TITLE OF CODE.

This codification of ordinances by and for the Town of Bailey shall be designated as the *Code of Bailey, North Carolina*, 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 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.

CHARTER. The Charter of the Town of Bailey, 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. Nash 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.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those 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 the entirety of the whole or a part of the 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 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, 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 the building or land, whether alone or with others.

TOWN. The Town of Bailey, North Carolina.

TOWN COUNCIL. The governing body of the Town of Bailey, North Carolina.

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

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of this town shall be by the following rules, unless the 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, the 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, the 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 town 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; the spelling shall be corrected and the 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 the error.

§ 10.11 OFFICIAL TIME.

The official time, as established by applicable state and federal laws, shall be the official time within this town 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 the act or the giving of the 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.

(A) All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided.

(B) 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 it is expressly provided.

§ 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) (1) 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.

(2) When subsequent ordinances repeal any chapter, section or subsection, or any portion thereof, the repealed portions may be excluded from this code by omission from reprinted pages.

(3) The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence that 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 the provisions by specific reference to the section number of this code in language substantially similar to the following: "Section _____ of the Code of Ordinances, Town of Bailey, 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 Bailey, North Carolina, is hereby amended by adding a section, to be numbered _____, which section shall read as follows:...." The new section shall then be set out in full as desired.

(D) All sections, subchapters, chapters, or provisions desired to be repealed must be specifically repealed by section, subchapter, or chapter number, as the case may be.

§ 10.18 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number, if any, and passage date of the original ordinance and the amending ordinances, if any, are listed following the text of the code section. *Example:* (Ord. 10, passed 5-13-1960; Am. Ord. 15, passed 1-1-1970; Am. Ord. 20, passed 1-1-1980; Am. Ord. 25, passed 1-1-1985)

(B) (1) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute. *Example:* (G.S. § 160A-11) (Ord. 10, passed 1-17-1980; Am. Ord. 20, passed 1-1-1985).

(2) A statutory cite set forth as a "statutory reference" following the text of the section indicates that the reader should refer to that statute for further information. *Example:*

§ 39.10 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. §§ 132-1 et seq.

(C) If a section of this code is derived from the previous code of ordinances of the town published in 1973 and subsequently amended, the 1973 code section number shall be indicated in the history by "(1973 Code, § ____)."

§ 10.99 GENERAL PENALTY.

(A) Unless this code of ordinances shall otherwise provide, violation of any provision hereof shall be a misdemeanor punishable upon conviction by a fine not exceeding \$500 or by imprisonment not exceeding 30 days, as provided in G.S. § 14-4. A provision of this code may provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. § 14-4.

(B) A provision of this code may provide that violation shall subject the offender to a civil penalty to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he or she has been cited for violation of the ordinance. The amount of the civil penalty shall be as stated in the ordinance violated except that the following existing provisions of the town code, if violated, shall subject the offender to civil penalties as hereinafter set forth in this section.

- (1) Chapter 91: Streets and Sidewalks;
- (2) Chapter 51: Municipal Utilities;
- (3) Chapter 151: Building Regulations;
- (4) Chapter 92.15 *et seq.*: Health and Sanitation;
- (5) Chapter 92.01—92.04, 94.01—94.02, 94.19, Chapter 95: Disorderly Conduct and Public Nuisances;
- (6) Ordinance Governing Construction and Maintenance of Mobile Homes, Trailers and Mobile Home Parks, as adopted October 5, 1976 and amended December 1, 1987.

(C) Unless otherwise stated therein, any ordinances hereafter adopted by the Board of Commissioners, the violation of which shall incur a civil penalty, shall be enforceable pursuant to the provisions of divisions (C)(1) and (C)(2) hereof. Civil penalties may be imposed upon a violator of this code or an ordinance of the town pursuant to the procedure set forth herein:

(1) *Citations.*

(a) *Issuance of citation.* The Code Enforcement Officer or other authorized officer, agent, or employee of the Town of Bailey is empowered to issue warning citations and citations with fines, if there is a reasonable cause to believe that any provision of the town code has been violated. Where a provision has been violated, such citation(s) shall be issued to the violator.

(b) *Violator.* A violator of a provision of the code or an ordinance of the town shall be deemed to be the owner of the premises, the agent of the owner authorized to be responsible for the premises, and/or the appropriate occupant, lessee, employee or person having immediate beneficial use of and/or responsibility over the premises or property.

(c) *Methods of issuance of citations.* A citation shall be considered issued if it is delivered in person to the violator, or if the violator cannot be readily found, then the citation may be mailed to

the last known mailing address of the owner or agent shown on public records. If the violator cannot be found and after other reasonable efforts have been made to communicate the existence of the violation the owner or agent, then the citation shall also be considered issued if directed the owner, agent or occupant and left at the place of residence or location of the violation.

(d) *Warning citation.* The initial citation for a violation shall be a warning citation. The warning citation shall set forth a date, time, and location of a violation hearing to be held as hereinafter set forth in division (C)(2)(a).

(e) *Citations with fines.*

1. If the violation continues after the deadline to correct a violation established after the violation hearing by the order requiring removal or correction of a violation, and no appeal has been filed prior to this date, then a citation with a fine in an initial amount of \$25 shall be authorized to be issued against the violator. Thereafter, each day the violation continues shall be deemed an additional offense and additional citations with increasing fines up to \$100 may be issued each day the violation continues. A hearing is not required for issuance of subsequent citations with fines after the issuance of a warning citation.

2. Any unpaid citations and delinquency charges shall be cumulative and shall be recovered in a civil action in the nature of debt as well as any attorney fees incurred by the town incident thereto.

(f) *Delinquency charge.* A citation with a fine shall direct the violator to make payment of the fine at the Town of Bailey collection's desk in the town hall within 15 days of the issuance, after which time a delinquency charge of \$10 shall be added to an unpaid fine shown on the citation. The citation shall inform the violator that a civil complaint or criminal summons may be filed if the citation and delinquency charge is not paid within 15 days from the date of delinquency. Further, the citation shall state that the violation is a continuing violation and additional citations may be issued with escalating amounts for a continuing violation.

(g) *Records.* All citations forms shall be serially numbered. Records of citations shall be maintained for a reasonable period of time.

(2) *Hearings.*

(a) *Violation hearings.* The Town Clerk or other authorized official, agent or employee of the town shall hold a hearing on a violation cited by a warning citation. Such hearing shall be held at a specified time and place as set forth in the warning citation. At this hearing, the violator, if present, shall be given an opportunity to be heard. After conducting the hearing, the Hearing Officer is authorized to issue an order requiring removal or correction of a violation, if there is still reasonable cause to

believe the violation continues to exist. Such order shall give the violator notice to correct the violation by a certain date (at least five working days from the date of the hearing), after which time citations with fines, as set forth in division (C)(1) above, are authorized to be levied, if the violation continues. A violator shall not be given more than six months in order to correct or remove the violation, except through appeal to the Board of Commissioners.

(b) *Appeals.* The amount of a citation fine cannot be appealed to the Board of Commissioners, if after the violator was sent a warning citation and following a violation hearing, the violator did not make an appeal to the Board of Commissioners within the prescribed deadline for correcting a violation as set forth in the order requiring removal or correction of a violation.

(Ord. passed 3-4-1997)

(1973 Code, § 1.5)

Statutory reference:

Similar provisions to division (E), see G.S. § 160A-175