

PART III

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

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

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Highlands, North Carolina," and may be so cited. Such Code may also be cited as the "Highlands Code."

State Law References: Codification of ordinances, G.S. § 160A-77; pleading and proving city ordinances, G.S. § 160A-79; general ordinance making power, G.S. § 160A-174.

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 board of commissioners or the context clearly requires otherwise.

Charter means the Charter of the Town of Highlands, North Carolina as printed in Part I of this volume.

Board means the Board of Commissioners of the Town of Highlands, North Carolina.

Code means the Code of Ordinances, Town of Highlands, North Carolina as designated in section 1-1.

Computation of time. In computing any period of time prescribed or allowed by this Code or by order of court, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. Eastern standard time shall be the official time except during that period when what is commonly known as "daylight saving time" is in effect, through adoption by the city council or otherwise.

County means the County of Macon in the State of North Carolina, except as otherwise provided.

Daytime, nighttime. "Daytime" is the period of time between sunrise and sunset, and "nighttime" is the period of time between sunset and sunrise.

Delegation of authority. Whenever a provision appears requiring the head of a department of the city to do some act or make certain inspections, it is to be construed to authorize the head of the department to designate, delegate and authorize subordinates to perform the required act or make the required inspection

unless the terms of the provision or section designate otherwise.

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

Governor means the Governor of North Carolina.

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

Keeper and proprietor means and includes persons, firms, associations, corporations, clubs and partnerships, whether acting by themselves or as a servant, agent or employee.

Manual of fees and charges means the official list maintained in the office of the town clerk, compiled in accordance with the provisions of G.S. section 160A-77, which establishes rates for utility or other public enterprises in addition to fees of any nature as determined from time to time by the board of commissioners.

Mayor means the mayor of the Town of Highlands.

Month means a calendar month.

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 such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

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

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."

Officers, departments, boards, etc. Whenever reference is made to any officer, department, board, commission or other municipal agent, agency or representative, such reference shall be construed as if followed by the words "of the Town of Highlands," except as otherwise provided in this Code.

Or, and. "Or" may be read "and," and "and" may be read "or" if the sense requires it.

Owner, 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 part of such building or land.

Person includes a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

Personal property includes every species of property except real property as defined in this section.

Preceding, following means next before and next after respectively.

Property includes real and personal property.

Real property includes lands, tenements and hereditaments.

Residence means the place adopted by a person as his place of habitation and to which, whenever he is absent, he has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed his residence.

Right-of-way means land that is dedicated or otherwise legally established for public use.

Roadway means that portion of a street improved, designed or ordinarily used for vehicular traffic.

Shall; may. The word "shall" is always mandatory and not merely directory; "may" is permissive.

Sidewalk means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians.

Signature or subscription includes a mark when the person cannot write.

State means the State of North Carolina.

Statute references. Whenever reference is made, for example, to G.S. section 160A-77, it shall be construed to refer to the General Statutes of North Carolina, section 160A-77, as amended, or whatever section is cited.

Street means and includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and the approaches thereto within the city.

Tenant or occupant, applied to a building or land, shall include any person who occupies the whole or 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 the present.

Title of office. The title of any office shall be construed to include the words, "of the Town of Highlands, North Carolina."

Town means the Town of Highlands in Macon County, North Carolina, except as otherwise provided.

Town limits or corporate limits means the legal boundary of the Town of Highlands, North Carolina.

Traffic schedule means the official list or schedule of the regulations compiled in accordance with G.S. section 160A-77, maintained in the office of the town clerk:

- (1) Designating the location of traffic-control devices;
- (2) Designating areas or zones where regulations are applied to parking, loading, bus stops, or

- taxicab stands;
- (3) Establishing speed limits;
 - (4) Restricting or regulating traffic at certain times on certain streets, or to certain types, weights or sizes of vehicles;
 - (5) Designating the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes; and
 - (6) Establishing regulations upon vehicle turns at designated locations.

Writing, written includes printing and any other mode of representing words and letters.

Year means calendar year.

(Code 1982, § 1.1)

State Law References: Similar rules of statutory construction, G.S. § 12-3.

Sec. 1-3. Catchlines of sections; history notes and references.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history notes appearing in parentheses after each section and the references and editor's notes scattered throughout the Code are for the benefit of the user of the Code and shall have no legal effect.
(Code 1982, § 1.3)

Sec. 1-4. Amendments to Code; effect of new ordinances; amendatory language.

(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 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 such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the board of commissioners.

(b) Amendments to any of the provisions of this Code may be made by amending such provisions by specific references to the section number of this Code in the following language: "That section _____ of the Code of Highlands, North Carolina, is hereby amended to read 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, the following language may be used: "That the Code of Highlands, North Carolina, is hereby amended by adding a section, to be numbered _____, which said section reads as follows:" The new section shall then be set out in full as desired.

(d) All sections, articles, chapters or provisions of the Code desired to be repealed must be specifically repealed by section, article, or chapter number, as the case may be.

Sec. 1-5. Criminal penalty; not exclusive remedy; continuing violations.

(a) Unless this Code shall otherwise provide, violation of any provision hereof shall be a misdemeanor punishable upon conviction by a fine not exceeding fifty dollars (\$50.00) or by imprisonment not exceeding thirty (30) days, as provided in G.S. section 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. section 14-4.

(b) In addition and unless otherwise provided by this Code any provision of this Code 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 an ordinance 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.

(c) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the case. 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 improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Code. 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.

(d) Except as otherwise provided in this Code or in any ordinance of the town, each day any violation of such Code or ordinance shall continue shall constitute a separate and distinct offense. (Code 1982, § 1.5)

State Law References: State law making violation of an ordinance a misdemeanor and stating punishment, G.S. § 14-4; municipal enforcement of an ordinance and penalties, G.S. § 160A-175.

Sec. 1-6. Ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or

right established or accruing before the effective date of this Code;

- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;
- (3) Any contract or obligation assumed by the city;
- (4) Any ordinance fixing the salary of any city officer or employee;
- (5) Any right or franchise granted by the city;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the city;
- (7) Any appropriation ordinance;
- (8) Any ordinance which, by its own terms, is effective for a stated or limited term;
- (9) Any ordinance providing for local improvements and assessing taxes therefor;
- (10) Any zoning ordinance;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the city;
- (13) The administrative ordinances or resolutions of the city not in conflict or inconsistent with the provisions of this Code;
- (14) Any ordinance levying or imposing taxes not included herein;
- (15) Any ordinance establishing or prescribing street grades in the city;
- (16) Any personnel ordinance;

nor shall such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this chapter; 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.

Sec. 1-7. Effect of repeal or expiration 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 on any proceeding commenced before the repeal took effect or the ordinance expired.

(b) When an ordinance which repealed another shall itself be repealed, the previous ordinance shall

not be revived without express words to that effect.
(Code 1982, § 1.4)

State Law References: Effect of repeal, G.S. § 12-2.

Sec. 1-8. 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 in such Code, shall be considered as continuations thereof and not as new enactments.

Sec. 1-9. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared on an annual basis. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the city council 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, and 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 meanings of ordinance sections inserted into 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. 1-10. Severability of parts of Code.

It is hereby declared to be the intention of the board of commissioners 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 by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality 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 city council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

(Code 1982, § 1.6)