

PART II
CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

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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 Cherryville, North Carolina" and may be so cited. Such Code may also be cited as "Cherryville City Code."
(Code 1973, § 1-1)

State Law References: Authority to adopt code of ordinances, G.S. 160A-77.

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:

Charter. The word "Charter" shall mean the Charter of the City of Cherryville as printed in Part I of this volume.

City. The words "the city" shall mean the City of Cherryville, in the County of Gaston in the State of North Carolina, except as otherwise provided.

City council or council. The phrase "city council" or "council" shall mean the governing body of the City of Cherryville, North Carolina.

Code. Whenever the word "Code" is used it shall mean the Code of Ordinances, City of Cherryville, North Carolina as designated in section 1-1.

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 shall be excluded.

County. The word "county" shall mean the County of Gaston in the State of North Carolina, except as otherwise provided.

Delegation of authority. Whenever a provision of this Code requires or authorizes an officer or employee of the city to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty unless the terms of the provision designate otherwise.

Gender. Words importing the masculine gender shall

include the feminine and neuter.

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

Month. The word "month" shall mean 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 include the singular number.

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."

Official time standard. Whenever certain hours are named in this Code, they shall mean standard time or daylight saving time, as may be in current use in this city.

Officials, departments, boards, commissions, etc. Whenever reference is made to officials, departments, boards, commissions, committees and the like, by title only, they shall be construed as if followed by the words "of Cherryville, North Carolina."

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

Owner. The word "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 such property.

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 term "personal property" shall include every species of property except real property, as herein defined.

Plural, singular. Words used in the singular shall include the plural and the plural shall include the singular number.

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.

Shall; may. The word "shall" is mandatory; and the word "may" is permissive.

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

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

State. The word "state" shall be construed to mean the State of North Carolina, except as otherwise provided.

Statute references. Whenever reference is made to G.S., it shall be construed to refer to the latest edition or supplement of the General Statutes of North Carolina.

Street. The word "street" shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and the approaches thereto within the city and shall mean the entire width of the right-of-way between abutting property lines.

Tenant; occupant. 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 or written. The word "writing" or "written" shall include printing and any other mode of representing words and letters.

Year. The word "year" shall mean a calendar year. (Code 1973, § 1-2)

State Law References: Computation of time, G.S. 1-593; similar definitions and rules of statutory construction, G.S. 12-3.

Sec. 1-3. Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of ordinances adopted prior to the adoption of this Code and included herein, shall be considered as continuations thereof and not as new enactments.

(Code 1973, § 1-3)

Sec. 1-4. Catchlines of sections; history notes, editor's 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 thereof, 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 after sections of the Code and the references and editor's notes scattered throughout the Code are not intended to have any legal effect, but are merely intended to assist the user of the Code.

(Code 1973, § 1-4)

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

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Sec. 1-6. Certain 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 when not inconsistent with this Code:

- (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 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 right or franchise granted by the city.
- (5) Any ordinance dedicating, naming, establishing, locating, opening, paving, widening, vacating, etc., any street or public way in the city.
- (6) Any ordinance establishing or prescribing grades for streets in the city.
- (7) Any appropriation ordinance or ordinances providing for the levy of taxes or for adopting an annual budget.
- (8) Any ordinance relating to local improvements and assessments therefor.
- (9) Any ordinance annexing territory to the city or discontinuing territory as a part of the city or amending the boundaries of the city.
- (10) Any ordinance regulating subdivision of land or dedicating or accepting any plat or subdivision in the city.
- (11) Any ordinance or resolution establishing or amending personnel rules or regulations.
- (12) Any ordinance or resolution prescribing any utility or other rates, charges or fees.
- (13) Any ordinance prescribing traffic

regulations for specific streets, such as ordinances establishing speed limits or designating one-way streets, no parking areas, truck routes, stop intersections, intersections where traffic is to be controlled by signals, etc.

- (14) Any ordinance establishing or amending zoning or land use regulations or the zoning map or rezoning property.
- (15) Any ordinance calling elections or prescribing the manner of conducting the election in accordance with state law.
- (16) Any ordinance prescribing any fee or payment of money to the city for licenses or any other fee or tax.
- (17) Any ordinance prescribing the number, classification, benefits or compensation of any city officers or employees, not inconsistent herewith.
- (18) Any ordinance which is temporary although general in effect.
- (19) Any ordinance which is special although permanent in effect.
- (20) Any ordinance containing any administrative provisions.

All such ordinances shall remain in effect and are on file in the city clerk's office.

Sec. 1-7. Code does not affect prior offenses, rights, etc.

(a) Nothing in this Code or the 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 before the effective date of this Code.

(b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the city in effect on the date of adoption of this Code.

Sec. 1-8. Amendments to Code.

(a) If the city council shall desire to amend any existing article or section of this Code, such article or section shall be specifically repealed and a new article 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, article or section shall indicate, with reference to the arrangement of this Code, the proper number of such chapter, article or section. In addition to such indication thereof as may be contained in the text of such proposed ordinance, such indication shall be shown in concise form above the ordinance.

(Code 1973, §§ 1-7, 1-8)

State Law References: Authority to revise and codify ordinances, G.S. 160A-77.

Sec. 1-9. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed. 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, 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) 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

- (3) Make other nonsubstantive changes necessary to preserve the original meaning 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 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 unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since they would have been enacted by the city council without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

(Code 1973, § 1-5)

Sec. 1-11. General penalty; enforcement of ordinances; continuing violations.

(a) Unless otherwise specifically provided, violation of any provision of this Code or any other city ordinance shall be a misdemeanor, as provided by G.S. 14-4.

(b) Violation of any provision of this Code or any other city 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 he has been cited for such violation.

(c) Any provision of this Code or any other city 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

(d) Any provision of this Code or any other city 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.

(1) 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 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 or such ordinance.

(2) 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 city may execute the order of abatement.

(3) 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.

(4) 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 city ordinance may be enforced by any one, 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 city ordinance shall be a separate and distinct offense.

(g) Violations of the Code of Ordinances of the City of Cherryville shall be punishable by fines as set forth in a schedule adopted by the City Council of the City of Cherryville, said schedule incorporated herein by reference. The following penalties are hereby established by the City Council for the City of Cherryville:

Warning Citation (Correct violation within a specific time period)

First Citation \$25.00

Second Citation \$50.00 (for same offense)

Third and Subsequent Citations for same offense \$50.00 for each day (Code 1973, § 1-6) (Amended 05-08-00)

State Law References: Violation of local ordinances misdemeanor, G.S. 14-4; enforcement of ordinances, penalty, G.S. 160A-175.