

SUBMISSION BY TOWN ATTORNEY OF THE TOWN OF OAK RIDGE (GUILFORD COUNTY) TO:

NORTH CAROLINA GENERAL ASSEMBLY /

**JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT
COMMITTEE**

As required pursuant to SL 2019-198 (SB584). Submitted by email 20 September 2019.

TOWN OF OAK RIDGE

ORDINANCE PROVISIONS PRESCRIBING CRIMINAL ENFORCEMENT

Chapter 2 - ADMINISTRATION

Sec. 2-3. - Enforcement of ordinances.

All ordinances of the Town of Oak Ridge shall be enforced in accordance with the procedures contained in Chapter 30, Article V of this Code. Appeal of any notice of violation subject to a civil penalty shall be to the board of adjustment in accordance with the procedures set forth therein.

Chapter 6 – ANIMALS

ARTICLE I. - IN GENERAL

Sec. 6-27. - Penalties.

The following penalties shall pertain to violations of this chapter:

The violation of any provision of this chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as provided in G.S. 14-4 or other applicable law. Each day's violation of this chapter is a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this subsection does not relieve a person of his liability for taxes or fees imposed under this chapter.

Enforcement of this chapter may include any appropriate equitable remedy, injunction or order of abatement issuing from a court of competent jurisdiction pursuant to G.S. 153A-123(d) and (e).

Issuance of a citation for a violation of the section entitled "Restraint of Animals" is directed toward and against the owner and/or possessor of an animal. The purpose of the issuance of a citation is to affect the conduct of the owner of an animal by seeking

to have an owner responsibly maintain sufficient restraint and confinement of his/her animal. Therefore, an owner of an animal shall be subject to escalating penalties for each violation of the section entitled allowed by the owner, whether the animal is the same animal, a different animal, or various animals belonging to the owner.

In addition to and independent of any criminal penalties and other sanctions provided in this chapter, a violation of this chapter may also subject the offender to the civil penalties hereinafter set forth in the schedule of fees attached hereto. The fees and civil penalties set out herein may be modified by the county.

a. The animal control supervisor, or designee, may issue to the known owner or keeper of any animal, or to any other violator of the provisions of this chapter, a citation giving notice of the alleged violations(s). Citations so issued may be delivered in person or mailed by certified or registered mail to the person charged if that person cannot readily be found. This civil penalty shall be paid in full to the animal control supervisor or his or her designee within 30 days of receipt of the citation assessing the civil penalty. This civil penalty is in addition to any other fees or costs authorized by this chapter. Failure to appeal any penalty within the designated time shall constitute a waiver of all rights of appeal.

For violations of section 6-10. Public nuisances prohibited, subsection (b)(2); security personnel for Guilford County are expressly authorized to issue citations for violations of the above-referenced section occurring on Guilford County property.

In the event that the owner or keeper of an animal or other alleged violator does not appear in response to the above-described ticket or citation, or the applicable civil penalty is not paid within the time period prescribed, a civil action may be commenced to recover the penalty and costs associated with collection of the penalty, and/or a criminal summons may be issued against the owner or keeper or other alleged violator of this chapter, and upon conviction, the owner shall be punished as provided by state law. The animal control supervisor, or designee, is expressly authorized to collect the fees or penalties as a debt. Failure to appeal an action within the stated deadline shall constitute a waiver of any rights of appeal.

ARTICLE II. - RABIES CONTROL

Sec. 6-30. - Compliance with state rabies laws; chapter supplemental to state rabies laws. It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.

It is the purpose of this chapter to supplement the state laws by providing procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by state law.

Chapter 30 - LAND DEVELOPMENT

Article V. – ENFORCEMENT

Sec. 30-253. - Violations.

Development without permit. Development inconsistent with permit. Violation by act or omission. Use in violation. Subdivide in violation. Continuing violation. Repeat violations. Responsible parties.

Sec. 30-254. - Remedies for violations.

(7) *Criminal penalties.* Any violation of this chapter shall be a misdemeanor or infraction as provided by G.S. 14-4, subject to a maximum fine of \$500.00, and may be prosecuted in the appropriate division of the general court of justice.

This provision makes the following regulated activities under the Code of Ordinances potentially enforceable by criminal prosecution as a misdemeanor as well as by civil procedures:

_Violations of zoning provisions

_Violations of subdivision provisions

_Violations of environmental regulations

_Violations of erosion and sedimentation control provisions

_Violations of flood control provisions

Sec. 30-258. - Criminal penalty, soil erosion and sedimentation control.

Any person who knowingly or willfully violates any soil erosion and sedimentation control provisions of this chapter, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000.00, or both.

Sec. 30-259. - Injunctive relief, soil erosion, and sedimentation control.

Whenever the enforcement officer has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved soil erosion and sedimentation control plan the enforcement officer may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the jurisdiction, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to

such proceedings from any civil or criminal penalty prescribed for violations of this chapter

DIVISION 4. - ILLICIT AND ILLEGAL DISCHARGES

Sec. 30-1288. – Objectives

The objectives of this division shall be as follows:

To provide for the enforcement of the county's stormwater quality management program, reduce the discharge of pollutants to receiving streams to the maximum extent practicable by requiring, where appropriate, the use of best management practices, structural and/or nonstructural stormwater quantity and quality control measures and other provisions, provide for the inspection and proper maintenance of structural and nonstructural stormwater controls, prohibit non-stormwater discharges to the receiving streams and require the removal of illicit connections to drainageways, prevent improper disposal of materials that degrade water quality, permit sampling and monitoring for pollutants such as those associated with illicit discharges, improper disposal, industrial and construction activities, and the application of pesticides, herbicides, and fertilizers.

Sec. 30-1290. - Authority.

This division is adopted pursuant to the following authorities in the General Statutes of North Carolina: G.S. 15 (Criminal Procedure), G.S. 113A (Pollution Control and Environment), G.S. 130A (Public Health), and G.S. 160A (Municipalities).

Sec. 30-302. - Conditional use districts and special use permits.

Purpose of conditional use districts. If the regulations and restrictions of a zoning district permitting a proposed use are inadequate to ensure the compatibility of the proposed development with the immediately surrounding neighborhood in accordance with the principles of this chapter and applicable adopted plans, the property owner may apply for rezoning to a conditional use district bearing the same designation as a standard zoning district but subject to additional conditions. The owner shall in such application specify the nature of the proposed development; and the owner or the town or its agencies shall propose conditions to ensure compatibility between the development and the surrounding neighborhood. Conditions shall be limited to those that address the conformance of the development and use of the site to this chapter and an officially adopted comprehensive plan and those that address the impacts reasonably expected to be generated by the development or use of the site. A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a conditional use district. Specific conditions applicable to these districts may be proposed by the petitioner or the town and its agencies, but only those conditions mutually approved by the town and the petitioner may be incorporated into the zoning regulations.

Noncompliance with permit conditions. If after receiving a notice of violation for violation of the terms or conditions of a special use permit, the owner fails to correct such violations

within a reasonable time, then the special use permit may, after a hearing, be revoked by the town council. The town council shall revoke such permit on all or part of a development if it finds that there has been a violation that: was intentional; or continued for an unreasonable time after the owner had notice thereof; or was substantially inconsistent with the purposes of the district and continued for any time after the owner had notice thereof and the opportunity to cure. All of the other remedies of this chapter for a zoning violation shall apply to a violation of the terms of a special use permit. Civil and/or criminal penalties may accrue pending the correction of a violation of a special use permit, notwithstanding the fact that the owner may correct the violation within a reasonable time for purposes of the revocation provisions of this subsection.

ARTICLE X. - ENVIRONMENTAL REGULATIONS

Sec. 30-1300. - Remedies.

Any or all of the following procedures may be used to enforce the provisions of this chapter:

Injunction. Any violation of this division or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

Civil penalties. Any person who violates any provision of this division shall be subject to the assessment of a civil penalty under the procedures provided in section 30-1299.

Denial of permit. The town manager or his designee shall withhold or deny any permit, certificate, or other authorization on any land, building, structure, or use in which there is an uncorrected violation of a provision of this article, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

Conditional permit or temporary certificate. The town manager or his designee may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate government authority.

Revocation of permit. The town manager or his designee may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application plans, or specifications; refusal or failure to comply with the requirements of state or local law; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable state or local law may also be revoked.

Criminal penalties. Any violation of this chapter shall be a misdemeanor or infraction as provided by G.S. 14-4. Each violation shall be subject to a fine not to exceed \$500.00.

Notification of the state enforcement officials.

Industrial and related facilities. When a town manager or his designee discovers an apparent violation of an industrial or related facility's NPDES stormwater discharge permit or that the facility is not operating pursuant to its stormwater pollution prevention plan, the county shall notify the appropriate state officials immediately.

Construction sites. If the town manager or his designee discovers an apparent violation of the NPDES stormwater discharge permit required by the state for sites with land disturbing activity greater than one acre, or less if part of a larger project, he shall report the violation immediately to the appropriate state officials.

Abatement. When the discharge from the facility interferes significantly with the receiving streams, and the facility fails to take appropriate actions upon notification by the county, the county may take immediate and appropriate measures to control the problem whether or not the facility is violating its NPDES permit and recover the cost from the facility.

Judicial enforcement. When any person is in violation of the provisions of this division, the town manager or his designee, through the town attorney, may petition the superior court of justice for the issuance of a restraining order or a preliminary and permanent injunction, which restrains or compels the activities in question.

Chapter 38 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE II. – NOISE

Sec. 38-31. - Annoying and disturbing noises.

Subject to the provisions of this section, it shall be unlawful for any person, persons, or business entity to make, permit, continue, or cause to be made, any unreasonably loud, disturbing, annoying or unnecessary noise in the incorporated area of Oak Ridge, with the exception of construction work pursuant to a federal, state, county or town contract which requires work to be performed during certain hours.

The following acts are declared to be loud, disturbing, annoying and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive:

Blowing horns, Radios, stereos, etc., Sound-producing equipment in vehicles, Animals, Operation of vehicles, Blowing whistles, Exhaust discharge, Compressed air devices, Noises to attract attention, Explosives, Hawking, peddling or soliciting, Loudspeakers or amplifiers.

Enforcement. The town in its discretion may through the sheriff or anyone designated in writing by the town manager take one or more of the following enforcement actions for violation of this section against any responsible person, persons or business entity as stated in subsection (a):

Issue a written warning.

Issue a citation subjecting a violator to a civil penalty of \$200.00. A second violation by the same person or business within one year of the violation shall subject such person or business to a penalty of \$400.00. All subsequent violations by the same person or business within one year of the first violation shall subject such person or business to a civil penalty of \$500.00. The town manager or his designee may on request and for good cause shown adjust a civil penalty.

Failure to pay a civil penalty imposed under this section within ten days shall subject the offender to an additional \$50.00 delinquency charge. Any unpaid penalty or delinquency charge may be recovered by the town in a civil action in the nature of a debt.

Each separate day of a continued violation shall be a separate and distinct offense and shall give rise to a separate and distinct penalty.

Violators may also be prosecuted under the provisions of G.S. 14-4 for a misdemeanor criminal offense punishable by a fine of not more than \$500.00 and/or imprisonment as designated for a class 3 misdemeanor.

This article may also be enforced by civil action for injunction and order of abatement.

This article may be enforced by any remedy authorized by G.S. 153A-123, either severally or in conjunction with other remedies.

Chapter 36 - PARKS AND RECREATION

Article III. - SEX OFFENDERS IN PARKS AND RECREATIONAL FACILITIES

Sec. 36-62. - Penalties.

Violation of this article shall be punishable by a fine of \$500.00 and/or incarceration for up to 30 days. Each entry into a public park or recreation area, regardless of the time period between such entries, shall constitute a separate offence under this article.

Chapter 38 - OFFENSES AND MISCELLANEOUS PROVISIONS

Article II. - NOISE

Sec. 38-31. - Annoying and disturbing noises.

(C)(5) Violators may also be prosecuted under the provisions of G.S. 14-4 for a misdemeanor criminal offense punishable by a fine of not more than \$500.00 and/or imprisonment as designated for a class 3 misdemeanor.

Chapter 42 - TRAFFIC AND MOTOR VEHICLES

Article IV. - SOLICITATION IN PUBLIC STREETS, HIGHWAYS OR VEHICULAR RIGHTS-OF-WAY

Sec. 42-71. - Roadway solicitation prohibited.

(a) It shall be unlawful for any person to stand, sit, or otherwise remain in any street, highway, or other vehicular right-of-way, excluding sidewalks, within the Town of Oak Ridge, while soliciting or attempting to solicit any employment, business, or contributions of any kind from the driver or occupants of any vehicle.

(b) This section shall not apply to emergency repairs of services requested by the operators of such vehicles.

(c) Any person adjudged in violation of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$50.00, or imprisoned for not more than seven days.

Chapter 46 – UTILITIES

ARTICLE II. - WATER SYSTEM ORDINANCE

Sec. 46-29. - General provisions. (c) *Destruction of system prohibited.* The malicious, willful, or negligent breaking, damaging, destroying, uncovering, defacing of or tampering with any structure, appurtenance or equipment which is a part of the system is prohibited. Any person convicted of violating this subsection shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the amount not exceeding \$500.00 for each violation. Each separate instance of such destruction or tampering shall be deemed a separate offense.
