

**TITLE I: GENERAL PROVISIONS**

Chapter

**10. RULES OF CONSTRUCTION; GENERAL PENALTY**



## CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY

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### **§ 10.01 TITLE OF CODE.**

This codification of ordinances by and for the Village of Wesley Chapel, North Carolina, shall be designated as the Code of Wesley Chapel, 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, 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 Village of Wesley Chapel, 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.

**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 day shall be excluded.

**COUNCIL.** The Mayor and Council, or governing body, of the Village of Wesley Chapel, North Carolina.

**COUNTY.** The County of Union, North Carolina.

**G.S. or GENERAL STATUTES.** The latest edition of the General Statutes of North Carolina, as amended.

**GOVERNING BODY.** The Village Council of Wesley Chapel, 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 the authority to a majority of persons or officers.

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

**MAYOR.** The Mayor of the Village of Wesley Chapel.

**MONTH.** A calendar month.

**NUMBER.** Words used in the singular include the plural, and the plural includes the singular number.

**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 the village unless the context clearly requires otherwise.

**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 the village.

**OFFICIALS, BOARDS, COMMISSIONS AND THE LIKE.** Whenever reference is made to an **OFFICIAL**, a **BOARD** or a **COMMISSION** by title only, it shall be deemed to refer to the official, board or commission of the village.

**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 curblineline 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.

**STATUTE REFERENCES**. Whenever reference is made, for example, to G.S. § 160A-272, it shall be construed to refer to the General Statutes of North Carolina, Section 160A-272, as amended, or to whatever section is cited.

**STREET**. Any public way, road, highway, street, avenue, boulevard, parkway, dedicated alley, lane, viaduct, bridge and the approaches thereto within the village and shall mean the entire width of the right-of-way between abutting property lines.

**SUBCHAPTER**.

(a) 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.

(b) 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.

**TENSE/TIME**. Words used in the past or present tense include the future as well as the past and present.

**VILLAGE**. The Village of Wesley Chapel, in the County of Union, North Carolina.

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

**YEAR**. A calendar year, unless otherwise expressed.

**Statutory reference:**

*Computation of time, see G.S. § 1-593*

**§ 10.06 RULES OF INTERPRETATION.**

The construction of all ordinances of the village 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 an 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 the village 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 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 the village 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 is Sunday, it shall be excluded.

**§ 10.13 ORDINANCES REPEALED.**

(A) 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.

(B) 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.**

(A) 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.

(B) 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, nor shall such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed. All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set forth at length in 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 or resolution promising or guaranteeing the payment of money for the village or authorizing the issuance of any bonds of the village or any evidence of the village's indebtedness;

- (3) Any contract or obligation assumed by the village;
- (4) Any ordinance fixing the salary of any village officer or employee;
- (5) Any right or franchise granted by the village;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving and the like any street or public way in the village;
- (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 or zoning map amendment;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the village;
- (13) The administrative ordinances or resolutions of the village 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 village;
- (16) Any personnel ordinance;
- (17) Any ordinance relating to Social Security and retirement benefits for village officers and employees; and/or
- (18) Any ordinance extending extraterritorial jurisdiction.

(C) Nor shall any 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 ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

***Statutory reference:***

*Governing body may omit ordinances of limited interest or transitory nature from code, see*

*G.S. § 160A-77(a)*

*Statutes not repealed by General Statutes, see G.S. § 164-7*

**§ 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 it is expressly provided.

**§ 10.17 ORDINANCES WHICH AMEND CODE; EFFECT OF NEW ORDINANCES.**

(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 division, or any portion thereof, the 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 that the subsequent ordinances numbered or omitted are readopted as a new code by the village.

(B) (1) Amendments to any of the provisions of the code shall be made by amending provisions by specific reference to the section number of this code in language substantially similar to the following:

“Section \_\_\_\_\_ of the Code of Ordinances, Village of Wesley Chapel,  
North Carolina, is hereby amended as follows...”

(2) The new provisions shall then be set out in full as desired.

(C) (1) 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, Village of Wesley Chapel, North Carolina, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which section shall read as follows:...”

(2) 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 and passage date of the original ordinance and amending ordinances, if any, are listed following the text of the code section. Example: (Ord. 10, passed 5-13-1960; Ord. 15, passed 1-1-1970; Ord. 20, passed 1-1-1980; 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; 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:

**§ 39.01 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. §§ 132-1 et seq.*

(C) The history notes following sections and the references scattered throughout the code are not part of the code, but are merely for the benefit of the user of the code.

**§ 10.99 GENERAL PENALTY.**

(A) *Administration.*

(1) Unless a greater amount is specified in an ordinance, an act constituting a violation of the provisions of any ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$50, which includes administrative fees. Each day any single violation continues shall be a separate violation. Unless expressly stated otherwise in an ordinance, a violation shall not

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constitute a misdemeanor pursuant to G.S. § 14-4. If the offender fails to correct a violation by the prescribed deadline after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.

(2) In addition to the civil penalties set out above, any provision of any village 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 village for equitable relief that there is an adequate remedy at law.

(3) In addition to the civil penalties set out above, any provision of any village 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 village 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 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.

(4) 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 village 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 village may execute the order of abatement. The village 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 judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(5) The provisions of any village ordinance may be enforced by one, all, or a combination of the remedies authorized and prescribed by this section.

### (B) *Procedures.*

(1) This section sets forth the procedures to be followed in enforcing the provisions of village ordinances. They shall be utilized unless an individual ordinance has different procedures, in which event the procedures of the individual ordinance shall be followed.

(2) Unless otherwise provided by a specific provision of any village ordinance, upon determination of a violation of any section of a village ordinance, the Enforcement Official of the village shall cause a warning citation to be issued to the violator. Such warning citation shall be issued 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 the county. 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 must be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs and attorney fees.

(3) Except for appeals from a warning citation for a violation of Ch. 156 of this code of ordinances, an appeal from a warning citation shall be taken within ten days from the date of said warning citation by filing with the Village Clerk and with the Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. 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.

(4) Where the Enforcement Official of the village 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.

(5) Upon failure of the violator to obey the warning citation, a civil citation may be issued by the Enforcement Official, 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 the county or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear in person at the Village Hall to pay the citation within 15 days of the date of the 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.

(6) If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the village may institute a civil action in the nature of debt in the appropriate division of the state's general court of justice for the collection of the penalty, costs, attorney fees and such other relief as permitted by law.

(Ord. 2015-06, passed 3-9-2015)

