

**ORDINANCE AMENDING CHAPTER 20 OF THE
DURHAM COUNTY CODE OF ORDINANCES**

WHEREAS, the North Carolina Legislature has, through Article 6 of Chapter 153A of the North Carolina General Statutes, delegated to counties the power to regulate by ordinance solid waste management; and

WHEREAS, the Board of County Commissioners of the County of Durham, pursuant to their authority granted under Article 6 of Chapter 153A of the North Carolina General Statutes, enacted a Solid Waste Ordinance to regulate solid waste, recycling, collection and disposal for the general health and welfare of the citizens Durham County; and

WHEREAS, the Board of County Commissioners wishes to amend the Solid Waste Ordinance to address concerns of public health nuisances, responsibility for illegally dumped wastes and solid waste management enforcement.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM
DOTH ORDAIN:

Chapter 20, Section 20-4, subsections a, b, d, e and h respectively of the Durham County Code of Ordinances are hereby amended to read as follows:

(a) No owner, occupant, tenant or lessee of any property may deposit, store, or permit to accumulate any solid waste on his property that is not stored or disposed of in a manner that may:

- 1) Become a nuisance;
- 2) Cause injury to the health or welfare of residents in the vicinity;
- 3) Detract from the value of the property or neighboring property; or
- 4) Violate any provision of this ordinance

(b) The owner, occupant, tenant or lessee of any property shall remove or cause to be removed all solid waste from his property at least once every ~~other week (14 day period)~~ week (7-Day Period).

(d) Refuse and or solid waste shall be stored in a manner that will resist harborage to rodents and vermin and will not create a fire hazard. Regulated refuse and or solid waste under this subsection includes but is not limited to, lumber, boxes, barrels, bottles, cans, tires, paper, cardboard, rags, old furniture and other bulky wastes, and white goods. Useful materials such as firewood and building materials, may be stored on the premises, provided they are stored in a safe manner and do not create a danger to public health or a nuisance.

(e) No owner, occupant, tenant, or lessee of any building or dwelling other than a licensed junk dealer, may place or leave, or cause to be placed or left, outside the building or dwelling any bulky waste for longer than seven calendar days.

(h) No person may discard, dispose, leave, or dump any solid waste on or along any street or highway or on public or private property unless such solid waste is placed in a receptacle or at a location designated for the deposit of solid waste. The owner and occupants of a vehicle shall be responsible for any dumping, littering, or other violation of this ordinance in which the vehicle is used. The addresses of first

class mail found in solid waste may be considered as prima facia evidence that the person named thereon is the person responsible for the disposal or management of that waste.

Chapter 20, Section 20-5, subsections e, f, g, h, and i, respectively of the Durham County Code of Ordinances, respectively are hereby added to read as follows:

- (e) Residents of Durham County that have received a recycling receptacle must replace receptacle(s) at their own expense if the County finds that damage was caused due to negligence or misuse by resident.
- (f) Residents shall maintain receptacle(s) at all times in good repair and in a neat sanitary condition.
- (g) Solid waste and recyclables shall be stored in a receptacle until collected for disposal or recycling.
- (h) Excess garbage or recyclables which cannot be placed in the receptacle will not be collected unless agreed upon with the hauler. For residents living in the unincorporated areas of Durham County with a current and valid solid waste decal, excess garbage and recyclables may be taken to one of the County's four solid waste and recycling convenience sites. Receptacles for recyclables shall be placed properly at the roadside for collection no earlier than dusk on the evening prior to the scheduled collection. Receptacles must be removed from the roadside no later than 7:00 am on the day following the scheduled collection.
- (i) Residents who leave their receptacles at the roadside in violation of this policy shall receive a courtesy card warning for the first violation and a warning sticker for the second violation. Third and future violations shall result in imposition of a penalty fee in an amount set annually by the Board of County Commissioners in the Budget Ordinance. Fines must be paid within fourteen (14) working days of the citation. Non-payment of fines shall result in a lien upon the property or premises where the violation arose, and shall be collected as unpaid taxes.

Chapter 20, Section 20-15, Subsection c of the Durham County Code of Ordinances is hereby added to read as follows:

- (c) The employees of the Durham County Solid Waste Division are hereby empowered to issue civil citations upon the observance of a violation of this Ordinance.

Chapter 20, Section 20-18 of the Durham County Code of Ordinances is hereby added to read as follows:

Sec. 20-18. Public Health Nuisance Abatement

The purpose for this section is to promote the public safety, health, and welfare of the citizens of Durham County through regulation of public health nuisances in the county. This article is adopted pursuant to the authority contained in N.C.G.S. 130A-309.61, N.C.G.S. 153A-121, 153A-123, and 153A-140.

- (a) It shall be unlawful for any person or persons to create a public health nuisance on any parcel of land or allow a nuisance to remain on their property. Public health nuisances are defined as any action or condition that is dangerous or prejudicial to public health or safety, and include, but are not limited to, the following:
 - 1. Accumulated junk, tires, trash, refuse, or construction debris that is a breeding ground or nest for mosquitoes, insects, rats, or other pests.

2. Anything causing offensive odors or health risks to others such as unburied domestic animals and stagnant water, or filthy privies and stables.
 3. Uncovered buildings, structures or containers with stagnant water found to be a breeding ground or nest for mosquitoes, other insects, rats, or other pests.
 4. Any uncovered well; open pit; unsecured vehicle, appliance, building that may cause entrapment or injury, or be a breeding ground or nest for mosquitoes, rats, or other pests.
 5. Any high grass and noxious weeds shall be kept mowed or cut to a height of not more than 12 inches. Exceptions include:
 - a. The use of trees and shrubs for landscaping purposes;
 - b. Areas planted to offset and control any soil loss problems, including areas along waterways and edges of lakes, ponds and stormwater retention/detention facilities;
 - c. Areas designated for educational studies;
 - d. Areas dedicated to growing fruits or vegetables for personal consumption or to growing flowers, native plants, ornamental grasses, ground covers, and shrubs.
- (b) Open space which includes, but is not limited to lawns, walkways, active recreation areas, playgrounds, wooded areas, greenways, woodlands, wetlands, watercourses, and other natural areas of Durham County are exempt from regulation through this section. Bona fide farms are also exempt from regulation through this section.
- (c) If, following notice by hand delivery, services of process, or certified mail, the owner of real property upon which a nuisance exists fails to remove, abate, or remedy the nuisance within the time limitations period identified in the notice or following appeal, the county may enter the property and remove, abate, or remedy the nuisance as provided herein.
- (d) The notice to the owner shall (1) identify the property and describe the nuisance located thereon to be removed, abated or remedied; (2) direct the owner to remove, abate, or remedy the identified nuisance; (3) provide the owner a reasonable time limitations period in which to comply, for a period of time not to exceed ninety (90) days; (4) inform the owner that the county shall enter the property to remove, abate, or remedy the nuisance if the owner fails to take appropriate action during the time period provided; (5) inform the owner that the costs incurred by the county to remove, abate, or remedy the nuisance, if not paid by the owner, shall be a lien upon the land or property and shall be collectable as unpaid taxes; and (6) notify the owner of its right to appeal the basis of the notice to the Director of General Services for a decision within ten calendar days of receipt of the notice.
- (e) If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall, in addition to the above, include the date, time, and location for a hearing before the Director of General Services on the matter. The notice shall be considered properly and adequately served if a copy thereof is conspicuously posted on the property in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the county at least once not later than one week prior to the hearing. If the Owner does not appear at the hearing after notice is provided herein, the Director of General Services shall consider the evidence and circumstances of the case and shall issue a decision either canceling the notice or directing the owner to remove, abate, or remedy the identified nuisance.

- (f) Owners may appeal a notice to the Director of General Services for decision. The owner may either rely on written materials or appear before the Director of General Services for a hearing at which he shall be heard in person or by counsel and may present arguments and evidence pertaining to the matter. The only issues for appeal are (1) whether the person is the actual owner of the real property, or (2) whether the action or condition that serves as the basis of the notice is dangerous or prejudicial to public health or safety. The fact the owner did not bring the nuisance to the property or does not have a possessory interest in the condition creating the nuisance is not a defense.
- (g) The Director of General Services shall within ten days of the date of the hearing or the date of the written appeal if a hearing is not requested, issue an order either canceling the notice or directing the owner to remove, abate, or remedy the identified nuisance.
- (h) If the Owner fails to remove, abate, or remedy a nuisance during the time period provided by the initial notice, or within thirty days of a decision of the Director of General Services, or judicial court from which an appeal has not been taken, then, pursuant to N.C.G.S. 153A-140 and subject to the provisions of Article 57 of Chapter 106 of the General Statutes, the county may enter the property and remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety. The expense of such action shall be paid by the Owner, and shall, if not paid, be a lien upon the property or premises where the nuisance arose, and shall be collected as unpaid taxes.
- (i) Enforcement of this section shall rest with those governmental agencies and personnel authorized to exercise police powers under N.C.G.S. 14-399 to include Litter Control Investigator and the Durham County Sheriff's Department.
- (j) The provisions of this section shall be enforced by the inspection of property and by observation of persons who are engaged in or responsible for a violation of an action or condition that is prejudicial to public health or safety. Enforcement personnel are empowered to issue citations, warning citations, or letters of warning when any of the provisions of this article have been violated. Citations shall be delivered by enforcement officials in person to the alleged violator or delivered by registered mail return receipt requested to the person so charged. Any citation of violation so delivered or mailed shall direct the alleged violator to appear in district court on or before a specific day or hour named in the citation. The period so specified shall not be less than seventy-two (72) hours after its delivery to the violator.
- (k) Where enforcement personnel determine that a violation is a first offense for the person charged, a written letter or warning citation shall be issued. Such warning letter or warning citation shall state therein the nature of the violation, the corrective measures to be taken, and the time and date when corrections are to be completed. Failure to comply with the corrective measures stated in such warning notices shall be just cause for enforcement personnel to issue a citation for violation of this Ordinance.
- (l) The Durham County Solid Waste Division shall cause all citation forms to be serially numbered and accounted for.

Chapter 20, Section 20-16, Subsections c and f, respectively of the Durham County Code of Ordinances are hereby amended to read as follows:

(c) Notice of civil penalty. If compliance has not occurred within the period specified above, or if a violation of this chapter is a single, discrete event, a notice of civil penalties shall be issued and either delivered in person to the violator or sent registered or certified mail. The notice of civil penalty shall direct that the notice of civil penalty shall be paid to the County within ten days of the date of issuance and shall inform the violator that this amount is not paid within the allotted time, a civil action will be initiated to collect the penalty. The County may assess a civil penalty for first offense violations of this Ordinance, for second offenses, and for each subsequent offense, which amounts may be recovered by the county in a civil action in the nature of a debt. Each day in which the violation occurs or continues shall constitute a separate offense. No civil penalty shall be assessed prior to notice of violation by citation or letter.

(f) Amounts of civil penalties.

(1) Scavenging at the convenience and recycling centers:

First offense...\$50.00

Second offense...\$100.00

Subsequent offenses...\$200.00

(2) Dumping prohibited materials or quantities of materials in or around the solid waste receptacles, placing recyclables in inappropriate containers or garbage in recycling containers:

First offense...\$100.00

Second offense...\$200.00

Subsequent offenses...\$300.00

(3) Violation of any other provision of this Ordinance:

First offense...\$100.00

Second offense...\$200.00

Subsequent offenses...\$500.00 or imprisonment of not more than 30 days.

(4) The provisions of this Ordinance may be enforced by injunction and order of abatement.

(5) Persons found to be in violation of the provision of this Ordinance may volunteer to perform cleanup work in lieu of prosecution, injunctive action, or civil penalties at the discretion of the General Services Director.