

An Ordinance Amending the Enforcement Provisions of Certain County Ordinances to Comply with Session Law 2021-138

WHEREAS, on August 25, 2022, the North Carolina General Assembly enacted Session Law 2021-138, which prohibited criminal penalties for certain local ordinance violations, removed the legal presumption that local ordinance violations constituted misdemeanor offenses and required local governments to specify which violations of its ordinances constitute misdemeanor offenses, and provided new defenses for persons charged with criminal violations of local ordinances; and

WHEREAS, the County Legal Department and has worked with the County officials who administer the County's Code of Ordinances to draft the amendments contained herein, which are intended to ensure that the County's Code of Ordinances conforms with Session Law 2021-138 and to provide the County with the means to enforce the provisions of the same; and

WHEREAS, this Board has determined that it is in the best interest of the citizens and residents of Buncombe County to enact the following revisions to the County Code of Ordinances.

NOW THEREFORE, be it ordained by the buncombe county board of commissioners that:

1 Section 1-7 (General Provisions; General penalty) of the Buncombe County Code of Ordinances is amended as follows:

Sec. 1-7. General penalty.

- (a) Any person violating or failing, refusing or neglecting to comply with any provision or requirement of any section or subsection of this Code, or any ordinance of this county now in force or hereafter enacted, to which no specific penalty is affixed, shall be punished by a ~~\$500.00, or shall be imprisoned for not more than 30 days,~~ \$50.00 civil penalty fine for each offense.
- (b) Any ordinance in this Code may be enforced by an appropriate legal remedy issuing from a court of competent jurisdiction. It shall not be a defense to the application of the county for equitable relief that there is an adequate remedy at law.
- (c) Each day that any breach or violation of or any failure to comply with any provision or requirement of any section or subsection of this Code or any ordinance of this county now in force or hereafter enacted continues, or is allowed to continue, shall constitute a separate and distinct offense; but nothing contained in this section or this Code shall be construed to relieve,

or shall have the effect of relieving, any offender of any fine, imprisonment or penalty for repeated violations on any one day of any ordinance now in force or hereafter enacted, or any section or subsection of this Code.

- (d) The imposition of a penalty under the provisions of this Code shall not prevent the revocation or suspension of any license, franchise or permit issued or granted under this Code.
- (e) If any violation of this Code is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the county in addition to the imposition of a ~~fine or imprisonment~~ civil penalty.
- (f) Any provision of this Code or other ordinance of the county may be enforced by any one or more of the remedies authorized by G.S. 153A-123.

State law reference(s)—Violations of county ordinances deemed misdemeanors, G.S. 14-4, 153A-123; prescribing alternate methods for enforcement of ordinances and authorizing the making of each day's continuing violation a separate offense; injunction, G.S. 1-485 et seq.

2 Section 6-42 (Animals; Inspection, Interference, or Concealment) of the Buncombe County Code of Ordinances is amended as follows:

- (a) *Inspections.* Whenever it is necessary to make an inspection to enforce any of the provisions of this article, or whenever the officer has reasonable cause to believe that there exists in any household or upon any premises any violation of this article, the officer is hereby empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon him by this article as follows:
 - (1) If such property is unoccupied, the officer shall first make a reasonable effort to locate the owner or other persons having control of the property; and
 - (2) If such property is occupied, the officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore; and
 - (3) If such entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be located after due diligence, the officer may seek an appropriate warrant issued and served as provided by law.
- (b) *Filing false reports.* It shall be unlawful for any person to file a false report with the department of animal control, or to provide false information to an officer involving any investigation of any reported violation of this article. ~~Any person found violating~~ A violation of this provision shall ~~be guilty of~~ constitute a Class 3 misdemeanor ~~and shall be fined not more than as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment.~~
- (c) *Frivolous or unfounded complaints.* It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with the department of animal control in order to intimidate or harass any member of such department or any animal owner,

or to otherwise hinder or interfere with any function of the department of animal control. ~~Any person found violating violation of~~ this provision shall ~~be guilty of constitute~~ a Class 3 misdemeanor ~~and shall be fined not more than~~ as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment.

- (d) *Interference.* It shall be unlawful for any person to interfere with, hinder, resist, or obstruct the officer while the officer is carrying out any duty created under this article. ~~Any person found violating violation of~~ this provision shall ~~be guilty of constitute~~ a Class 3 misdemeanor ~~and shall be fined not more than~~ as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment.
- (e) *Concealment of animal.* It shall be unlawful for any person to conceal any animal for the purpose of evading any federal, state or local law. ~~Any person found violating violation of~~ this provision shall ~~be guilty of constitute~~ a Class 3 misdemeanor ~~and shall be fined not more than~~ as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment. ~~In addition, the officer has the authority to seize the animal pursuant to this article.~~

- 3 Section 6-116 (Animals; Criminal Penalties) of the Buncombe County Code of Ordinances is amended as follows:

Violation of this article may subject the violator to criminal as well as civil action. In addition to the civil penalties or fees imposed under this article, violation of this article shall be a misdemeanor for which a criminal summons or warrant may be issued. ~~Any violator convicted of such A~~ violation of this Chapter shall be punishable constitute a Class 3 misdemeanor as provided set forth in N.C. Gen. Stat. §G.S. 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment. Each day's violation of this section is a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this section does not relieve the violator of his liability for taxes, civil penalties or fees imposed under this article.

- 4 Section 14-79 (Massage Parlors and Health Salons; Hours of Operation) of the Buncombe County Code of Ordinances is amended as follows:

No masseur or masseuse or any person or party engaging in any of the businesses licensed by this article shall engage in such business, trade, profession, occupation or calling except within and between the hours of 8:00 a.m. and 10:00 p.m.; nor shall any operator of a massage parlor or establishment or business enumerated ~~in section 14-76~~ and not specifically excepted under this article, operate the same except within and between such hours. Violations of this or any other section of this article shall be considered under this article as an offense. ~~Persons found guilty of such violations shall be punished in~~

~~accordance with section 1-7. A violation of this provision shall constitute a Class 3 misdemeanor as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment.~~

- 5 Section 14-92 (Massage Parlors and Health Salons; False Statements) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

It shall be unlawful for any person to willfully make any false statement on an application for a license under any section. A violation of this provision shall constitute a Class 3 misdemeanor as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment.

- 6 Section 14-130 (Adult Establishments; Violations and Penalties) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

A violation of this Article shall constitute a Class 3 misdemeanor as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment. Each day's violation of this section is a separate offense.

- 7 Section 22-28 (Ambulance Services; Penalties for Violation of Article) of the Buncombe County Code of Ordinances is amended as follows:

(a) It shall be ~~unlawful misdemeanor~~ for any person to obtain or receive ambulance service without intending at that time of obtaining or receiving such services to pay, if financially able, the necessary charges. A determination that the recipient of such services has failed to pay for the services rendered for 90 days after the request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient of the services did not intend to pay for the services at the time they were obtained or received.

(b) Violations of this article, or the terms of any franchise granted under this article, shall be ~~punishable by a civil penalty a misdemeanor, as provided by G.S. 14-4~~. Each such violation also shall subject the offender to a civil penalty in the amount of \$100.00 for each separate breach of the franchise or violation of this article. This civil penalty must be paid within ten days after the hearing on the citation has been held as provided in subsection 22-44(b). If not so paid, such penalty may be recovered by the county as provided by G.S. 153A-123(c). If the civil penalty is not paid within the ten days, as provided for in this subsection, the county may suspend or revoke the franchise.

- 8 Section 26-33(a) (Air Pollution Control; Penalties and Remedies for Violation of Article) of the Buncombe County Code of Ordinances is amended as follows:

(a) Any person violating any of the requirements contained in this article shall be guilty of a Class 3 misdemeanor under N.C. Gen. Stat. § 14-4 and subject to a \$500 maximum penalty, upon conviction, be punished in accordance with section 1-7. Each day in violation shall constitute a separate offense and shall be subject to the penalties provided by G.S. 143-215.3(A)(11)(E).

- 9 Section 26-138(1) (Junkyards; Penalties and Remedies for Violation of Article) of the Buncombe County Code of Ordinances is amended as follows:

(1) Violations of the provisions of this article or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a Class 3 misdemeanor as set forth in N.C. Gen. Stat. § 14-4. The maximum fine for a violation under this Chapter is \$500.00 or a maximum 30 days imprisonment.~~misdemeanor, punishable in accordance with section 1-7.~~

- 10 Section 26-283(e)(1) (Junked and Abandoned Vehicles; Enforcement Provisions) of the Buncombe County Code of Ordinances is amended as follows:

A violation of this article shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in ~~G.S. 14-3(3)~~ and G.S. 14-4.

- 11 Section 26-402(g) (Stormwater Management; Remedies and Penalties) of the Buncombe County Code of Ordinances is deleted in its entirety and replaced with nothing.

- 12 Section 30-44 (Fire Prevention and Protection; Fire Marshal; Violation; Penalty) of the Buncombe County Code of Ordinances is amended as follows:

A violation of this article shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4~~be a misdemeanor punishable by a fine of not more than \$50.00 or by imprisonment for not more than 30 days or by both such fines and imprisonment.~~ The imposition of a penalty for any violation shall not excuse the violation nor shall the violation be permitted to continue. Also such persons shall be required to correct or remedy such violations or defects within a reasonable time, and when not otherwise specified, the application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. Proof of such unlawful act or failure shall be deemed prima facie evidence that such act is that of the owner or other person in control of the premises. Prosecution or lack thereof of either the owner, occupant or person in charge shall not be deemed to relieve any of the others.

- 13 Section 34-38(a) (Flood Damage Prevention; Penalties for Violation) of the Buncombe County Code of Ordinances is amended as follows:

(a) ~~Any person who violates any~~ ~~Violation of the~~ provisions of this article or fails ~~sure~~ to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be subjected to a civil fine of up to \$25,000.00 ~~constitute a Class 1 misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$25,000.00 or imprisoned for not more than 120 days, or both.~~ Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Buncombe County from taking such other lawful action as is necessary to prevent or remedy any violation.

14 Section 38-2 (Historical Preservation Commission; Penalty for Violation of Chapter) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(1) Any act constituting a violation of the provisions of this article or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$100.00 per violation. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the county in a civil action in the nature of debt.

(2) Each day that any violation continues after final notification by the administrator that such violation exists may be considered a separate offense for purposes of the penalties and remedies specified in this article.

(3) This article may also be enforced by any appropriate equitable action. Such remedy may include a court order of abatement as part of a judgment in the case. The abatement order may include removal of violation and other actions required to make the property comply with the provisions of this article at the owner's expense.

15 Section 46-1(f) (Manufactured Homes and Trailers; Entrance, Movement and Setup of all Pre-1976 Mobile Homes Within the County; Penalty) of the Buncombe County Code of Ordinances is amended as follows:

Penalty. With the exception of violations related to registration requirements adopted pursuant to N.C. Gen. Stat. § 153A-138, which may not be enforced via criminal penalty, a violation of this Chapter shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4 ~~Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and shall be subject to fine and/or imprisonment as provided by G.S. 14-4(a) and shall be fined not more than \$500.00. Any violation of this Chapter may be enforced pursuant to Section 1-7 of the Buncombe County Code of Ordinances.~~ Each day's continuing violation of this section shall be a separate and distinct offense.

16 Section 46-67(a) (Manufactured Homes and Trailers; Manufactured Homes Parks; False Statements; Penalty for Violation) of the Buncombe County Code of Ordinances is amended as follows:

It shall be unlawful for any person to make any false statement or to submit any altered document in connection with or in support of any application for a permit to establish and operate a manufactured home park. Any violation of this section shall be punishable as set forth in Section 46-1(f)~~Any violation of this section shall be punishable as class 3 misdemeanor as provided in G.S. 14-4(a).~~

17 Section 50-2(c) (Offenses and Miscellaneous; County Courthouse Property; Penalty for Violation of Section) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(c) *Penalty for violation of section.* A violation of this Section shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

18 Section 50-3(f) (Offenses and Miscellaneous; Regulating Entry into Courthouse) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(f) *Penalty for violation of section.* A violation of this Section shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

19 Section 50-4(e) (Offenses and Miscellaneous; Carrying of Concealed Handguns) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(e) *Penalty for violation of section.* A violation of this Section shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

20 Section 50-5(c) (Offenses and Miscellaneous; Certain Usage of County Property Prohibited; Signage) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(c) *Penalty for violation of section.* A violation of this Section shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

- 21 Section 54-1 (Parks and Recreation; Penalty for Violation of Chapter) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

A violation of this Chapter shall constitute a Class 3 misdemeanor, punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

- 22 Section 62-29(a) (Solid Waste Management; Penalties; Remedies for Violations of Article) of the Buncombe County Code of Ordinances is amended as follows:

(a) Report; notice; ~~warrant~~ summons. Except as otherwise provided in this section, violations of this article shall be reported to the director of solid waste who shall thereupon investigate the matter and attempt an informal resolution of such violation. If no solution is reached, the director of solid waste ~~may~~ shall cause notice to issue by personal service or registered or certified mail to the owner, occupier, tenant, lessee, or person in control of the property on which a violation exists. Such notice shall state the particulars of the violation, the date on which the violation was confirmed by the solid waste department, and shall state that such person has 15 days from receipt of the notice in which to remedy the violation. This section shall not prevent the director of solid waste from issuing a notice on discovery of a violation without having first had a report of a violation. After the expiration of the 15-day period, if the violation has not been corrected, the director of solid waste ~~may~~ shall cause a criminal summons ~~warrant~~ to issue. The owner, occupier, tenant, lessee, or person in control of the property on which the violation exists shall be guilty of a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4 ~~misdemeanor. The penalty for violation of this article shall be in accordance with section 62-33.~~

- 23 Section 62-30(d)(6) (Solid Waste Management; Storage; Collection; Transportation; Disposal) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(6) *Penalty for violation of subsection.* A violation of subsection (d)(3), (d)(4) or (d)(5) of this section shall constitute a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

- 24 Section 62-33 (Solid Waste Management; Penalties) of the Buncombe County Code of Ordinances is amended as follows:

Any person, including an individual, owner, occupant, tenant, lessee, firm or business entity, and including any hauler, franchised collector, or other collector or provider, who violates the provisions of this article or any local or state health or solid waste rules or regulations adopted pursuant to this article shall be guilty of a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4 ~~or misdemeanor and shall~~ be subject to a civil penalty in the amount of

\$50.00 for the first violation, and a civil penalty of \$100.00 for a second or subsequent violation.

- 25 Section 62-43 (Solid Waste Management; Franchise Collectors and Haulers; Penalties for Violation of Division) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

Any person who violates the provisions of this division or any local or state health or solid waste rules or regulations adopted pursuant to this division shall be guilty of a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

- 26 Section 62-75(c) (Solid Waste Management; Hazardous Waste; Enforcement; Penalties for Violation of Article) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

(c) *Criminal penalty.* Any person violating any provisions of this article or conditions of a county license or permit shall be guilty of a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

- 27 Section 70-6 (Subdivisions; Penalties for Violation of Chapter) of the Buncombe County Code of Ordinances is amended as follows:

Any person who, being the owner or agent of any land located within the planning jurisdiction of the county, thereafter subdivides his-such land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of plat showing a subdivision and recorded in the office of the county register of deeds, shall be guilty of a misdemeanor as set forth in G.S. § 160D-807 or as amended subject to a civil penalty in the amount of \$100.00. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transactions from this penalty. The county, through its attorney or other official designated by the board of commissioners, may enjoin illegal subdivision, transfer, or sale of land by action for injunction. Building permits required pursuant to G.S. 160D-1110 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct. Further, violators of this chapter shall be subject to the remedies as set forth in section 1-7. The county may also assess a \$100.00 per-day civil penalty for each day that the plat or property is not in compliance with this chapter. Each day that such plat or property is not in compliance with this chapter shall constitute a separate and distinct offense.

Approval of an erosion control plan alone shall not constitute approval of a subdivision plan. Plan review fees shall be double the normal fee amount when land disturbing activity begins before preliminary approval of a subdivision is obtained from the county. Any land disturbing activity begun prior to preliminary approval of a subdivision shall be subject to a civil penalty of \$100.00 per day. Each day the violation continues shall be considered a separate offense.

28 Section 70-68(i) (Subdivisions; Standards; Hillside Development Standards) of the Buncombe County Code of is amended as follows:

(i) *Enforcement.* Any person violating any provision of this section shall be subject to a civil penalty of not less than \$100.00 per day and not to exceed \$1,000.00 per day. Each day the violation continues shall constitute a separate violation. ~~Violations shall be subject to the provisions of G.S. 14-4.~~

29 Section 78-30 (Zoning; Watershed Protection) of the Buncombe County Code of Ordinances be deleted in its entirety and replaced with the following provision:

Any person violating any provisions of this article shall be guilty of a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4. Each day that the violation continues shall constitute a separate offense.

30 Section 78-65 (Zoning; Penalties for Transferring Lots in Unapproved Subdivisions) of the Buncombe County Code of Ordinances is amended as follows:

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the county, thereafter subdivides his land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this article and recorded in the office of the register of deeds, shall be subject to a civil penalty in the amount of \$500.00~~guilty of a misdemeanor~~. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The County of Buncombe may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this article.

31 If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declare that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

32 All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

33 This ordinance is effective upon adoption.

Read, approved and adopted this 19th day of May, 2022.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

LAMAR JOYNER, CLERK

BY: _____
BROWNIE NEWMAN, CHAIRMAN

APPROVED AS TO FORM

COUNTY ATTORNEY