

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

SOLID WASTE ORDINANCE

ARTICLE I. AUTHORITY AND PURPOSE

Be it ordered by the Watauga County Board of Commissioners that the following Ordinance and Regulations for the protection of the public health and safety are hereby adopted pursuant to authority granted by Chapter 153A, Sections 121, 122, 123, 132.1, 136 and 292 of the North Carolina General Statutes, and shall, among other things:

Provide for regulation in the most economically feasible, cost-effective and environmentally-safe manner, the storage, collection, transportation, separation, processing, recycling, and disposal of solid waste, to include hazardous waste (to the extent permitted by law) and medical waste, in order to protect the public health, safety and welfare;

Enhance the environment for the citizens and the residents of Watauga County and recover resources which have the potential for further usefulness, all in accordance with the authority, purposes, policies and goals enunciated in the laws and regulations of the State of North Carolina pertaining to solid waste management;

Deter unlawful disposal of solid waste;

Abate illegal dump sites; and

Encourage reporting of littering and illegal dumping.

ARTICLE II. JURISDICTION AND APPLICABILITY OF FEDERAL AND STATE LAWS

Pursuant to NCGS 153A-122, this ordinance shall apply to all areas of unincorporated Watauga County which are not within the corporate limits of any municipalities. All municipalities and their respective corporate limits shall be exempted from the ordinance, unless they choose to adopt this ordinance or some form thereof.

The intent of this ordinance is to promote and encourage proper and lawful solid waste management including but not limited to waste reduction, reuse, recycling, and disposal.

The provisions of this Ordinance are intended, and shall be interpreted, to be consistent with and supplementary to the North Carolina General Statutes, State rules, and any county ordinance, regarding solid waste. To insure such intent and interpretation,

and in the event of ambiguity between the provisions of this Ordinance and other laws, rules, or ordinances, the stricter of the provisions shall apply. Any violation of such provisions shall also be a violation of this Ordinance.

ARTICLE III. ADMINISTRATION AND ENFORCEMENT

The Watauga County Board of Commissioners authorizes the administration and enforcement of this Ordinance. The administration and enforcement of this ordinance shall be vested with the Sheriff's Department.

ARTICLE IV. DEFINITIONS

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

1. Board: Board of Commissioners of Watauga County.
2. Bulky waste: Large man-made items of solid waste such as furniture, large auto parts, and other oversized wastes whose large size precludes or complicates their handling by normal solid waste collection, processing, or disposal methods.
3. Collection: The act of removing solid waste (or materials that have been separated for the purpose of recycling) to a transfer station, processing facility, or disposal facility.
4. Commercial solid waste: All types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial waste; provided, that the definition of commercial solid waste is also applicable to places of residence having three or more dwelling units such as apartment buildings and mobile home courts.
5. Commercial Solid Waste Collector: Any person, firm, corporation, or other entity, engaged in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated within the service area, including any such entity engaged in such activities with respect to solid waste generated by others for profit and/or hire.
6. Construction and Demolition Waste: Solid waste resulting solely from construction, remodeling, repair, or demolition operations on buildings, or other structures, but does not include inert debris, land-clearing debris, yard debris, brick, uncontaminated soil, sand, gravel, rock, concrete, or concrete block.
7. Department: The Department of Environment and Natural Resources.

8. Disposal: The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

9. Division: The Director of the Division of Solid Waste Management of the North Carolina Department of Environment and Natural Resources, or the Director's authorized representative.

10. Enforcement Officer: A deputy employed by the Watauga County Sheriff's Department as appointed by the Watauga County Sheriff whose duties primarily are the enforcement of this ordinance.

11. Farming: Activities related or incidental to production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

12. Garbage: All putrescible waste, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

13. Hazardous waste: A solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Provided, however, that nothing herein shall be construed to authorize the County to regulate hazardous waste in any manner prohibited by or pre-empted by the applicable North Carolina General Statutes and State rules and regulations.

14. Industrial process waste: Solid waste resulting from an industrial or manufacturing process which may be disposed of at the county landfill after demonstrating its non-hazardous status through analysis, or by other means. Includes, but is not limited to sandblasting grit, contaminated food products, ash and dust.

15. Industrial solid waste: Solid waste generated by manufacturing or industrial processes that is not hazardous waste.

16. Inert debris: Solid waste, which consists solely of material that, is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

17. Infectious waste: Solid waste capable of producing an infectious disease. The types of waste designated as infectious are: microbiological waste, pathological waste, blood products and sharps.

18. Institutional Solid Waste: Solid waste generated by educational, correctional, and other institutional facilities.

19. Land-clearing debris: Solid waste which is generated solely from land-clearing activities.

20. Landfill: A disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

21. Medical waste: Any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Ordinance, radioactive waste, or household waste as defined in 40 CFR §261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this Ordinance.

22. Municipal solid waste: Any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, or industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

23. Open dump: Any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a facility for the disposal of hazardous waste, specifically including a solid waste disposal site that does not have a permit, and/or does not comply with the rules set forth in the North Carolina Solid Waste

Management Rules, 15A N.C.A.C. 13b.

24. Pathological waste: Human tissues, organs, and body parts, and the carcasses and body parts of any animals that were known to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologicals or in vivo testing of pharmaceuticals, or that died with a known or suspected disease transmissible to humans.

25. Person: Any individual, firm, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

26. Premises: A definite portion of real estate including its appurtenance, a building, or part of a building.

27. Processing: Any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amendable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

28. Putrescible: Solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal, and animal carcasses.

29. Radioactive waste: Waste containing any material, whether solid, liquid, or gas that emits ionizing radiation spontaneously.

30. Recyclable material: Those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

31. Recycling: Any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to the use in the form of raw materials or products.

32. Refuse: All nonputrescible wastes. Solid waste, other than garbage and ashes, from residences, commercial establishments, and institutions.

33. Regulated medical waste: Blood and body fluids in individual containers in volumes greater than 20ml, microbiological waste, and pathological waste that has not been treated pursuant to state rules.

34. Residential waste: Solid waste originating from private households (private single-family homes and apartments, condominiums, etc., not institutional residential facilities). Solid waste from a place of residences having three or more dwelling units is defined as commercial solid waste.

35. Sanitary Landfill: A facility for disposal of solid waste on land in sanitary manner in accordance with rules concerning sanitary landfill adopted under Article 9 Chapter 130A as defined in NCGS §130A-290.

36. Scrap tire: (Whole scrap tires are banned from disposal at the landfill) A tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.

37. Sharps: Needles, syringes, and scalpel blades.

38. Sludge: Any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, or air pollution control facility, or any other waste having similar characteristics and effects.

39. Solid Waste: Any hazardous or non-hazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. Solid waste does not include:

a. Fecal waste from fowls and animals other than humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludge generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.

2. Irrigation return flows.

3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section

402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludge that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recyclable material.

g. Hazardous waste excluded pursuant to G.S. 153A-136 and G.S. 153A-294.

40. Solid Waste Rules: The regulations governing solid waste management adopted by the Solid Waste Section of the Department of Environment and Natural Resources in accordance with EPA guidelines and other Federal Regulations.

41. Used oil: any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose.

42. White goods: Includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

43. The definitions set forth in NCGS §130A-290 which are not expressly set forth in this ordinance shall apply to and are hereby incorporated herein by reference to this ordinance.

ARTICLE V. STORAGE AND DISPOSAL

1. No person, owner, occupant, tenant, or lessee of any property may deposit, store or permit to accumulate any solid waste on property owned or occupied by the person, owner, occupant, tenant, or lessee that is not stored or disposed of as required by this Ordinance.

2. The owner, occupant, tenant, or lessee of any property shall remove or cause to be removed all solid waste from his property at such reasonable intervals as will prevent a nuisance from arising which causes or creates the likelihood of injury to the health, safety, or welfare of another person or the likelihood of injury to adjoining property.

3. Garbage and refuse shall be stored and/or sorted in a manner that will resist harborage to rodents and vermin and will not create a fire hazard.

4. No owner, occupant, tenant, or lessee of any building or dwelling may place or leave, or cause to be placed or left, outside the building or dwelling any bulky waste for longer than ninety (90) days. Provided that the storage of junk vehicles in compliance with other Watauga County Ordinances shall not constitute a violation of this Solid Waste Management Ordinance.

5. No owner, occupant, tenant, or lessee of any building or dwelling may leave outside the building or dwelling, in a place accessible to children, any abandoned or unattended icebox, refrigerator, freezer, or other item or piece of equipment that has a door or cover that cannot be opened from the inside, without first removing the door.

6. Solid waste may be disposed of only in one of the following ways:

(a) In a landfill, transfer facility, or other disposal facility duly authorized and permitted by the Division;

(b) In an incinerator that has obtained and possesses all required local, state and federal control permits;

(c) By any other method, including recycling and resource recovery, that has been approved by the Division;

(d) At a container-site or convenience center operated by Watauga County, and transported to a landfill or other disposal facility duly authorized and permitted by the Division; or

(e) As otherwise authorized by the Watauga County Solid Waste Operations Ordinance.

7. No person may discard, dispose of, 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 locations properly permitted for the deposit of solid waste.

8. No person shall throw, scatter, spill, place, cause, or allow to be blown, scattered, spilled, thrown or placed, or otherwise dispose of any litter upon any public property or private property not owned by said violator within Watauga County or into the waters of Watauga County including, but not limited to, upon any public highway, public park, lake, river, stream, campground, forest land, recreational area, mobile home park, highway, road, street or alley; the occurrence of any of the foregoing acts resulting from transporting solid waste in a vehicle shall constitute a violation.

9. No person shall intentionally and willfully dump or deposit any solid waste material on the property owned by the violator or the property of another with or without the *written* consent of the property owner which is inconsistent with proper and lawful solid waste management and disposal practices.

10. No person shall burn solid waste except as permitted by existing fire codes and state laws.

11. Nothing in this Ordinance is intended to authorize the disposal of solid waste in any manner prohibited by federal or state laws or regulations.

12. Construction and Demolition waste as defined herein must only be disposed of at disposal sites approved and permitted by the Division.

13. Regulated medical, hazardous, and radioactive waste must be disposed of according to written procedures approved by the Division.

14. All sharps shall be placed in a sealed, puncture-proof container prior to disposal.

15. A person operating or having operated an open dump for disposal of solid waste or a person who owns land on which such an open dump is or has been operating shall immediately close the site in accordance with 15A NCAC 13B §.0502.

16. No person shall bury solid waste in earth or submerge solid

waste in water unless expressly permitted by this Ordinance or applicable federal and state law and regulations.

17. Pursuant to G.S. 153A-136 and G.S. 153A-294, no person shall dispose of hazardous waste within any Watauga County solid waste disposal facility.

ARTICLE VI. DEFINITION AND ABATEMENT OF SOLID WASTE NUISANCES

1. By the authority of the provisions of N.C. Gen. Stat. §153A-140 of the North Carolina General Statutes, the storage, accumulation or presence of solid waste on public or private property in the area of jurisdiction of this Ordinance which is:

- (a) A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests; or
- (b) A point of collection for pools or ponds of water; or
- (c) A point of concentration of gasoline, oil, or other flammable, toxic or explosive materials; or
- (d) So located that there is a danger of falling, sliding or turning over; or
- (e) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces or metal, glass, or other rigid materials

is hereby proclaimed and declared to be unlawful and a public nuisance. Such public nuisance shall be subject to abatement as provided in this Ordinance.

2. Upon reasonable cause to believe that a public nuisance as defined above exists, the Enforcement Officer or his designee, and upon not less than ten (10) days' notice to the occupant and owner of the property on which the alleged nuisance is located, shall make a determination of whether or not such nuisance does, in fact, exist. If the Enforcement Officer makes a determination that a public nuisance exists, he shall enter and serve upon the owner and occupant an order to remove, abate or remedy the nuisance within a reasonable period of time, but not more than ninety (90) days. Such

order may be appealed by the owner or occupant to the Board of County Commissioners as provided in ARTICLE VII of this ordinance.

3. Upon failure of the owner or occupant of the property, or of the person responsible for placing such solid waste on the property to remove, abate or remedy the nuisance within the period the officer has allowed, pursuant to N.C. General Statute 153A-140 an Enforcement Officer shall remove, abate or remedy the nuisance as provided in the order and charge the cost thereof to the owner and occupant. If such expense is not paid by the owner or occupant within ten (10) business days, it shall be a lien upon the land or on premises where the nuisance arose and shall be collected as unpaid taxes.

ARTICLE VII. ENFORCEMENT MEASURES AND REMEDIES

The Watauga County Sheriff shall designate the Enforcement Officer(s) from the Sheriff's Department sworn staff, who shall have the authority and duty to perform inspections, issue citations, assess penalties and take enforcement actions. Also, the other departments of the County may accompany the Enforcement Officer to assist in administration and enforcement.

Watauga County may exercise remedies for violation of any provision of this ordinance as allowed and authorized by the North Carolina General Statutes, including but not limited to civil penalties, equitable remedies, and criminal prosecution.

In addition, whenever the Enforcement Officer receives a proper, non-anonymous, written complaint alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted (including, in his or her discretion, any appropriate informal measures deemed helpful toward procuring compliance with this Ordinance). The Enforcement Officer shall inform the complainant in writing what actions have been or will be taken.

A warning may be issued by the Enforcement Officer without fine when the officer is of the opinion that a violation of this ordinance may be remedied without the necessity of prosecution; however, a warning citation may not be issued in the case where public health and/ or safety are endangered.

Waiver of enforcement by the county of any provision of this Ordinance shall not prejudice the enforcement of remaining portions of this Ordinance.

1. Civil Enforcement and Penalties:

(A.) Notice of violation. The Enforcement Officer may issue a notice of violation to any person who fails to comply with any provision of this Ordinance. The notice of violation shall contain a description of the violation, the date of inspection, a description of the action necessary for correction of the violation and the date (no more than ten (10) business days from the date of the notice) that compliance is required. The notice shall also specify the amount of civil penalty that may be imposed should the violator fail to take corrective action within the time frame set forth for compliance with the ordinance. The notice shall be hand delivered or mailed by certified or registered mail, return receipt requested, to the person or persons alleged to be in non-compliance. The Enforcement Officer shall sign a statement for his file of the date, time and manner of delivery. The failure to comply with the notice of violation by taking corrective action may result in any of the civil or criminal remedies set forth in this section.

(B.) Civil penalties and remedies. Civil remedies and penalties are as follows:

(1.) Pursuant to the provisions of G.S. 153A-123(a), any person violating any provision of this Ordinance is subject to a civil penalty in the amount of \$100.00. Each day said condition continues to exist shall constitute a separate and distinct violation.

(2.) Pursuant to G.S. 153A-123(c), the county may file a civil action to recover the civil penalty provided for in Section F subsection (b)(1) of this section, if the offender does not pay the penalty within the prescribed period as set forth in the notice of violation.

(3.) Pursuant to G.S. 153A-123(d), the county may seek any appropriate equitable relief that it deems necessary to ensure the health, safety and welfare of the citizens or the natural resources of the county.

(4.) Pursuant to G.S. 153A-123(a), the county may seek an injunction when the non-compliance or violation is creating an imminent hazard to the health, safety and welfare of the public.

(C.) Appeal. Any person who receives a notice of violation, or order to remove, abate, or remedy a nuisance may, within ten business days of the day the notice was received, submit a written appeal to the Board of County Commissioners. The appeal notice shall specifically state the reasons for the appeal with a copy of the notice of violation attached thereto. The County Manager shall schedule a hearing for the next regular Board of County Commissioner's meeting, and notify the appellant, and the Board of County Commissioners upon the hearing shall render a decision upholding, denying or modifying the notice of violation. Accrual and imposition of the civil penalties shall be stayed pending the appeal. However, there will be no stay for equitable remedies available to the County. If the decision of the Solid Waste Enforcement Officer is affirmed, accrual and imposition shall resume. Any appeal not filed within ten (10) business days of the day notice was received shall be considered not timely.

The Board of Commissioners may consider hardship as basis for extending the period for compliance up to six (6) months. In no case shall the Board indefinitely excuse compliance. An extension may be granted upon the appellant meeting two (2) of the four (4) following criteria:

1. appellant is at least sixty-five (65) years of age;
2. health problems documented by appellant's medical record which substantially affect the appellant's ability to comply with the ordinance;
3. severe weather that prevents appellant from complying within the original time frame;
4. taxable income below fifty percent (50%) of the County's current median income, as determined by the US Department of Housing and Urban Development, documented by appellant's latest tax return.

(D.) Appeals of Board Actions. Every decision of the Board shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the date the decision is approved in the Board's minutes. Appeals not filed within this thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this ordinance during the pendency of an appeal from the decision of the Board of Commissioners upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

2. Criminal Penalty: Any violation of any provision of this

ordinance shall be a Class 3 misdemeanor, subject to a five hundred dollar (500.00) fine, and punishable pursuant to NCGS §153A-123 and N.C.G.S. 14-4. Each day's continuing violation shall be a separate and distinct offense.

3. This ordinance may also be enforced by equitable remedies, and any unlawful condition which may be in violation of this ordinance may be abated by mandatory or prohibitory injunction in accordance with N.C.G.S. §153A-123.

ARTICLE VIII. EXEMPTION FOR FARMING

This ordinance shall not regulate or be applied to regulate products or by-products of farming, or materials, supplies or equipment used in farming, so long as the generation, handling or disposal of such is not made illegal by other law, ordinance or regulation.

ARTICLE IX. CHANGES IN STATE LAW

Should N.C.G.S. §153A-132.1, N.C.G.S. §153A-136, and N.C.G.S. §153A-292 or any section of the General Statutes of North Carolina incorporated herein by reference or otherwise referred to herein be change or amended, or should such statutes require or mandate a difference procedure or change or impose new, different or additional requirements, then, in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new additional or amended requirements.

ARTICLE X. SEVERABILITY

If any Section, subsection, sentence, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

ARTICLE XI. CONFLICT WITH OTHER ORDINANCES

Whenever the provisions of this ordinance and any other ordinance impose overlapping or contradictory regulations, the ordinance which is more restrictive or imposes higher standards or requirements shall be controlling.

ARTICLE XII. EFFECTIVE DATE

This ordinance as amended shall become effective on the 1st day of July, 2006.

ADOPTED this the 27th day of June, 2006.

Watauga County's Ordinance Prohibiting Throwing or Depositing Trash on Public or Private Property, adopted 3 May 1971 and Article VI of the Watauga County Solid Waste Ordinance made effective 21 December 1993 are hereby abolished and superceded.

BOARD OF COMMISSIONERS FOR THE
COUNTY OF WATAUGA

ATTEST:

by: _____
James Deal, Jr., Chairman

Anita J. Fogle, Clerk to the Board

APPROVED AS TO FORM:

Anthony di Santi, County Attorney