

Text of Ordinance #13263, approved by City Council on June 5, 2006

**AN ORDINANCE AMENDING CHAPTER 10 OF THE DURHAM CITY CODE
TO PROVIDE COMPREHENSIVE AUTHORITY FOR
REMEDIAION AND CIVIL ENFORCEMENT**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM:

Section 1. That the following sections be added:

Sec. 10-7. Remedial activities.

(a) The department shall have the authority to perform a remedial activity in any of the following instances:

(i) To execute an order of abatement in a civil action pursuant to chapter 1, section 1-9(d) and G.S. section 160A-175.

(ii) To summarily remove, abate, or remedy a condition, pursuant to G.S. section 160A-193 and as authorized hereby, that is dangerous or prejudicial to the public health or safety.

(iii) To remove, abate, or remedy a condition that violates a provision of this chapter or rule or regulation established under section 10-2 and that is detrimental to the public health or safety, the environment, or citizen quality of life.

(b) The department shall have the authority to require that a person in default of legal obligations reimburse the department for costs and expenses in any instance where the department performs a remedial activity in response to such default. Such costs and expenses may be the actual costs incurred by the City to remedy the default, or standardized allocations of the City's remedial costs.

Sec. 10-8. Civil enforcement; criminal enforcement prohibited.

(a) Remedial fees. Whenever in this chapter or rule or regulation established under section 10-2 any act is prohibited or declared unlawful or any act is required or failure to perform the act is declared unlawful, the violation of such provision shall subject the violator to a remedial fee as established by resolution of city council.

(b) Any provision of this chapter or rule or regulation established under section 10-2 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 city for equitable relief that there is an adequate remedy at law.

(c) Any provision of this chapter or rule or regulation established under section 10-2 making unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement. The General

Court of Justice shall have jurisdiction to issue such orders and such actions shall proceed pursuant to G.S. section 160A-175(e). Where the city executes an order of abatement, the lien and any cancellation of the order of abatement shall constitute costs and expenses under section 10-7(a).

(d) Any provision of this chapter or rule or regulation established under section 10-2 may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section and the remedial activities authorized and prescribed by section 10-7.

(e) Continuing offenses. Except as otherwise provided, each day of any violation of any provision of this chapter or rule or regulation established under section 10-2 shall constitute a separate and distinct offense.

(f) Criminal enforcement of any violation of any provision of this chapter or rule or regulation established under section 10-2 is hereby prohibited. Any such violation does not constitute a misdemeanor or other criminal violation. Any such provision may be enforced only through one or more civil actions authorized by this section.

Sec. 10-9. Solid waste enforcement personnel.

The director or director's designee shall have the authority to pursue remedial activities or enforce any provision of this chapter or rule or regulation established under section 10-2, pursuant to rules established under section 10-2.

Sec. 10-10. Administrative review process.

Any person who receives notice of imposition of a cost, expense, or fee under section 10-7(a)(iii) or 10-8(a) and (e) may obtain review by written request to the director, which must be received by the department within ten (10) calendar days of provision of notice. Within thirty (30) calendar days of receipt, the director shall review the request and render a written decision maintaining or withdrawing, in whole or in part, the cost, expense, or fee imposed, which shall be the final decision of the city. Such decision, or absence of a request for review under this subsection, shall constitute exhaustion of the department's administrative review process. E-mail communication shall constitute written communication for purposes of this Section.

Sec. 10-11. Recovery and retention of remediation costs and expenses and remedial fees.

(a) Costs, expenses, and fees imposed under sections 10-7 and 10-8 shall be remitted to and retained by the department.

(b) Owners and occupants of real property are responsible for costs, expenses, and fees relating to that property. The department may obtain payment from owners or occupants as appropriate or necessary.

(c) Costs, expenses, and fees not remitted to the department within thirty (30) calendar days after provision of notice or exhaustion of the administrative review

process, whichever is later, may appear on the combined utility bill of the person in default under section 10-7 or the violator under section 10-8 and shall receive the same payment priority as other department charges.

(d) Costs, expenses, and fees not remitted to the department within thirty (30) calendar days after provision of notice or exhaustion of the administrative review process, whichever is later, may be recovered in a civil action in the nature of debt if recovery under subsection 10-10(c) is inapplicable.

(e) Interest on any unpaid cost, expense, or fee shall accrue at the rate of one percent (1%) per month and be incorporated into that cost, expense, or fee.

(f) If a cost or expense incurred under subsection 10-7 (b) is not paid as required, it shall constitute a lien pursuant to G.S. section 160A-193.

Section 2. That the following sections be amended to read as follows:

Chapter 10 Garbage and Other Solid Waste

State law references: Authority to regulate, G.S. 160A-192, 160A-303.1, 160A-311 et seq.; solid waste management, G.S. 130-166-16 et seq.; G.S. Section 160A-193, Abatement of public health nuisances; G.S. Section 14-399, Littering.

Sec. 10-1. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them:

Ashes: The residue from the burning of wood, coal, coke and other combustible material in homes, stores, institutions and small commercial establishments and industrial plants, which are produced as the result of heating, cooking and disposing of combustible waste material. Ashes are usually composed of a mixture of fine powdery residue, some cinders and clinkers and small portions of unburned or partially burned fuel or other material. At times ashes might include small quantities of glass, crockery, sweepings, dust, metal, brick and other inorganic materials. Ashes will also include residue from household refuse incinerators and from yard rubbish burners as well as the remains from burning leaves and yard rubbish in open fires. Cinders and clinkers include large residue from the burning of coal and coke as produced from larger furnaces such as steam-generator plants or large heating furnaces.

Building rubbish: Waste material resulting from construction, remodeling, repairs and demolition operations on houses, commercial buildings and other structures, including driveways and walks, and it comprises waste and rejected matter such as excavated earth, stones, bricks, plaster, wallpaper, sheetrock and lathes, lumber, shingles, tile, concrete and waste parts occasioned by the installation or replacement of plumbing, heating systems, electrical work and roofing.

Chapter: In Article I, Article II, Article III, Article IV, Division 1 of Article V, and Article VII herein, chapter refers to those provisions of this chapter.

Combustible rubbish : Any burnable materials such as paper, rags, cartons, cardboard and wooden boxes, wood, excelsior wood, furniture, bedding, leather,

rubber, tree branches, yard trimmings, sawdust, leaves, linoleum, plastics and the like.

Department: The Department of Solid Waste Management or its administrative successor.

Director: The director of the department or his or her designee.

Disposal area: Area where refuse is unloaded from collection trucks, either a landfill, rubble landfill, compost facility or a transfer station.

Garbage: The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods; garbage being composed largely of putrescible organic matter and its natural moisture content and originating primarily in home kitchens, stores, markets, restaurants, hotels, hospitals, or other places where food is stored, prepared or served. The word "garbage" shall not include liquid that may be drained into the sewer.

Household trash: Any waste accumulation of paper, sweepings, dust, rags, bottles, discarded toys, small appliances, cans or other material of similar kind other than garbage, which is usually attendant to housekeeping.

Industrial refuse. Solid waste materials, from factories, processing plants, wholesale establishments, assembling plants or shops and garages, such as: paper, cardboard, cartons, food processing wastes, cinders and ashes, lumber scraps, sawdust, excelsior, shavings, floor sweepings, metal scrap and shavings, glass and other waste products.

Litter: Any discarded or abandoned, used or unconsumed substance or waste, including, but not limited to: garbage, trash, refuse, debris, rubbish, lawn and garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging, construction debris, motor vehicle parts, furniture, oil and dead animals.

Noncombustible rubbish: Materials such as metals, tin cans, metal furniture, dirt, glass, crockery, ashes and cinders mineral matter, etc., that will not burn in the incinerator at the ordinary operating temperatures of from twelve hundred fifty (1,250) degrees to two thousand (2,000) degrees Fahrenheit.

Person in default: A person required by state law, Durham City Code, resolution of council, department policy, or as ordered by a court of competent jurisdiction, to perform or not to perform an act, and who fails to comply with that requirement.

Recyclables: Materials that can be converted into component materials for the manufacture of new products.

Refuse: All classifications of solid waste, and shall include garbage, rubbish, ashes, cinders, street refuse, dead animals, abandoned automobiles and industrial refuse. Refuse derives from such places as homes, hotels, institutions, stores, restaurants, markets, wholesalers, processing plants, factories, shops, garages, office buildings, streets, sidewalks, alleys, vacant lots, power plants and the like.

Rubbish. Combustible rubbish and noncombustible rubbish.

Street refuse: Both combustible and noncombustible materials such as street sweepings, dirt, leaves, catch basin collections, grass trimmings, contents of litter receptacles and glass.

Target recyclables: Materials, declared as target recyclables by written policy of the director, that can be converted into component materials for the manufacture of new products and that have a stable market which assures that the materials will be sold and will not need to be stored or disposed.

Tipping fee: A monetary charge levied per ton for the disposal of garbage, yard waste, or other types of waste at a city disposal area.

Transfer station: A facility that allows for the unloading of solid waste so that it can be put in large trailers or containers and transported to a sanitary landfill.

Yard rubbish: Tree branches, stumps, twigs, grass and shrub trimmings, bushes, weeds, leaves and general yard and garden waste materials and shall include stone and dirt rakings and any waste materials resulting from landscaping.

Yard waste: Tree branches, twigs, grass and shrub trimmings, bushes, weeds, leaves and general yard and garden waste materials.

(Code 1964, § 9-1; Ord. No. 7000, § 1(a), (b), 6-26-86; Ord. No. 9518, § 1, 4-6-92; Ord. No. 11287, § 1, 11-3-97)

Cross references: Definition of "dead animal," § 10-71 (for purposes of that section only).

Sec. 10-2. Rules and regulations.

The director, subject to the approval of the city manager, shall have the authority to establish rules and regulations, consistent with the provisions of this chapter, governing the keeping, collection, removal and disposal of refuse and the maintenance and operation of the landfill area. Included, without limitation, are rules and regulations pertaining to remedial activities and civil enforcement, including collection and disposition of city or personal property located on city or other public property or right-of-way in violation of this chapter or rule or regulation established under section 10-2, and that designate the size and type of container, location of collection, frequency of collection, types of refuse separation and other types of refuse or recyclable material collections. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

(Code 1964, § 9-2; Ord. No. 9486, § 1, 1-21-92)

Sec. 10-29. Damage to roll-out refuse carts and recycling bins.

(a) *Prohibition.* It shall be unlawful for any person to deliberately set fire to, put hot ashes in, drive over, crack or otherwise damage or destroy a roll-out refuse cart or recycling bin that has been provided by the city.

(Ord. No. 9518, § 3, 4-6-92)

Sec. 10-57. Unauthorized use of bulk refuse containers.

It shall be unlawful for any person to place material in a bulk refuse container situated upon private property unless such person owns or occupies the property,

or is an employee or agent of such owner or occupant, or has been given written permission by the owner or occupant to use such container.
(Code 1964, § 9-19.2; Ord. No. 5369, § 1, 4-21-80)

Sec. 10-97. Use denied.

The director may deny any person or business entity use of the city disposal areas for failure to pay the fees prescribed herein, until those fees have been paid.
(Ord. No. 7000, § 5, 6-26-86; Ord. No. 11287, § 6, 11-3-97)

Sec. 10-108.1. Rules and regulations governing litter control.

(a) *Dumping of litter.*

(1) *Generally.* No person, firm, organization, private corporation, governing body, or the agent or employee thereof shall scatter, spill, place, dump, deposit, drop, throw, discard, leave, cause or permit the scattering, spilling, placing, dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property not owned by him or her in the city unless:

- a. The property has been designated by the city and the State of North Carolina as a public landfill site for the disposal of litter, the site is being maintained by the city as a public landfill, and the litter is deposited at the landfill in accordance with the rules and regulations for the proper disposal of litter;
- b. The litter is placed in a private receptacle or other container intended by the owner or tenant of that property on which the receptacle is located for the deposit of litter or is otherwise disposed of in a manner that is in conformity with federal, state and other laws regulating the disposal of waste; or
- c. The litter is placed in a receptacle maintained and designated by the city for the deposit of litter.

(2) *Prohibitions.*

- a. No person, firm, organization, private corporation, governing body or the agent or employee thereof shall place litter around a public receptacle or on top of a full receptacle so as to result in litter falling outside of the receptacle.
- b. No person, firm, organization, private corporation, governing body, or the agent or employee thereof shall dispose of household or commercial solid waste in receptacles in city parks and recreation areas, sidewalk receptacles designated for pedestrian use or other city owned receptacles.
- c. No person, firm, organization, private corporation, governing body, or the agent or employee thereof shall scatter, spill, place, dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle or boat into any river, lake, pond, stream or body of water in the city.
- d. No person, firm, organization, private corporation, governing body, agent or employee thereof shall place, throw, leave or abandon on any road, sidewalk, alley or parking facility in the city any glass bottle or the fragments thereof, any broken glass or crockery of any kind, nails, tacks, bricks, bats, or any other article or object capable of and liable to injure or puncture the tires of an automobile, motorcycle, bicycle or other motor vehicle.

e. No person shall place in a public receptacle: fire or embers, herbicides, liquids, pesticides, poisons, chemicals, dead animals, furniture, large appliances (including, but not limited to, stoves, refrigerators, freezers, washers and dryers), hazardous substances (including, but not limited to, oil and toxic chemicals), construction debris.

(b) *Places of business.*

(1) The owner, person or organization in control of any property that is open to the public for the transaction of business, as a place for assemblage, recreation or as a public way and, including but not limited to, restaurants, shopping centers, fast food outlets, convenience stores, hotels, motels, industrial establishments, apartment buildings, housing projects, construction sites, loading and unloading docks, gas stations, trailer parks and hospitals and clinics shall at all times keep the premises clean of all litter thrown or left on such premises and shall take all necessary measures, including immediate cleanup of the premises to prevent litter from drifting or blowing onto any adjoining property.

(2) The owner, person or organization in control of any property named in subsection (1) above shall place receptacles of sufficient size and number on the property for the disposal of litter. Such receptacles shall be conspicuously identified as being available for the disposal of litter.

(c) *Other laws.* The provisions of this section are additional and supplemental to G.S. Section 14-399, which prohibits the littering of publicly and privately owned property.

(Ord. No. 9519, § 1, 4-6-92)

Section 3. That this ordinance shall take effect on July 1, 2006.