

Chapter 1: General Provisions

Sec. 1-1. - How Code is designated and cited.

The ordinances embraced in this and the following chapters shall constitute and be designated "The Code of the City of Tucker, Georgia," and may be so cited. The Code may also be cited as the "Tucker City Code" or the "City Code."¹¹

Sec. 1-2. - Definitions and rules of construction.

(a) Construction. In the construction of this Code and of all ordinances, the rules of construction and definitions set out in this section shall be observed. The rules of construction and definitions set out in this section shall not be applied to any section of this Code which shall contain any express provisions excluding such construction or where the subject matter or context of such section may be repugnant thereto.

(b) Generally. The ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter when they shall have the signification attached to them by experts in such trade or with reference to such subject matter. In all interpretations the courts shall look diligently for the intention of the council, keeping in view, at all times, the old law, the evil and the remedy. Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

(c) Liberal construction; minimum requirements; overlapping provisions. All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the council may be fully carried out. In the interpretation and application of any provision of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this Code imposes greater restrictions upon the subject matter than the other provisions of this Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling; the specific controls over the general.

(d) Definitions. The following words, terms and phrases, when used in this Code, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

As soon as possible. The term "as soon as possible" means within a reasonable time, having due regard to all the circumstances.

City. The term "City" means the City of Tucker, Georgia.

Code. The term "Code" means The Code of the City of Tucker, Georgia, as designated in Section 1-1.

Computation of time. When a number of days is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted. If the last day shall fall on Saturday or Sunday, then the party having such privilege or duty shall have through the following Monday to exercise such privilege or to discharge the duty. When the last day prescribed for such action shall fall on a public or legal holiday as set forth in state law, the party having such privilege or duty shall have through the following business day to exercise such privilege or to discharge the duty. When the period of time prescribed is less than seven days, an intermediate Saturday, Sunday and legal holiday shall be excluded in the computation.

Conjunctions. Where a provision involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows, provided in appropriate cases the terms "and" and "or" are interchangeable:

- (1) The term "and" indicates that all the connected items, conditions, provisions or events shall apply.
- (2) The term "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- (3) The term "either ... or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.

Council. The term "City Council" or "Council" means the City Council of the City of Tucker, Georgia. The full City Council consists of six council members and the mayor.

Council Member. The term "Council Member" means the individual members of the City Council, including the Mayor.

County. The term "County" means DeKalb County, Georgia.

Delegation of authority. Whenever a provision appears requiring a city officer or city employee to do some act, it is to be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the required act.

Fire department. The term "fire department" shall refer to the county fire department, which provides services to the city.

Gender. Words of one gender include all other genders.

Governing authority, governing body. The term "governing authority" or "governing body" means the Mayor and City Council of the City of Tucker, Georgia.

Joint authority. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

Judge. The term "judge" means the municipal judge.

Keeper and proprietor. The terms "keeper" and "proprietor" mean persons, whether acting by themselves or acting as a servant, agent or employee.

Month. The term "month" means a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. The singular and plural number includes the other, unless expressly excluded.

O.C.G.A., state acts. The abbreviation "O.C.G.A." means the Official Code of Georgia Annotated, as amended. A reference to a state act, whether by year and act number, year, act number and page, year and page or short title, is a reference to such act as amended.

Oath. The term "oath" includes an affirmation.

Officials, employees, boards, commissions or other agencies. Whenever reference is made to officials, employees, boards, commissions or other agencies by title only, the reference refers to the officials, employees, boards, commissions or other agencies of the city, or other political subdivision when acting under an intergovernmental agreement represents the city.

Owner. The term "owner," as applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership or joint tenant of the whole or of a part of the building or land.

Person. The term "person" includes any association, club, society, firm, corporation, limited liability company, partnership or body politic and corporate, as well as an individual.

Personal property. The term "personal property" includes every species of property except real property.

Police. The term "police" means the police department of the county which is serving as the police force for the city.

Preceding; following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Public place. The term "public place" includes any place that the public is invited or permitted to go or congregate.

Real property. The term "real property" includes lands, tenements and hereditaments.

Shall, may. The term "shall" is to be construed as being mandatory; the term "may" is permissive.

Sidewalk. The term "sidewalk" means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature or subscription. The terms "signature" and "subscription" include the mark of an illiterate or infirm person.

State. The term "State" means the State of Georgia.

Street or road. The term "street" or "road" includes any street, avenue, boulevard, road, alley, lane, viaduct and any other public highway in the city, including, but not limited to, the paved or improved surfaces thereof.

Tenant or occupant. The term "tenant" or "occupant," applied to a building or land, includes any person holding a written or oral lease of or who occupies the whole or a part of a building or land, either alone or with others.

Tense. Words used in the past or present tense include the future, as well as the past and present.

Week. The term "week" means seven days.

Will. The term "will" is to be construed as being mandatory.

Writing. The term "writing" shall include be construed to include printing.

Year. The term "year" means a calendar year.

Sec. 1-3. - Catchlines of sections, effect of history notes, references in Code.

(a) The catchlines of the several sections of this Code in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections nor as any part of such sections nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. Editor's notes, cross references, and state law references which appear after sections or subsections of this Code or which otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

(c) All references to chapters, articles, divisions, subdivisions or sections are to chapters, articles, divisions, subdivisions or sections of this Code, unless otherwise specified.

Sec. 1-4. - Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any punishment or penalty incurred before the repeal took effect or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed or cause of action arising under the ordinance before it expired or was repealed.

Sec. 1-5. - Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code. The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of these subsequent ordinances or resolutions until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code.

(b) Amendments to any of the provisions of this Code may be made by amending those provisions by specific reference to the section number of this Code in the following language: "Section ___ of The Code of Tucker, Georgia, is hereby amended to read as follows:

...." The new provisions may then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added, the following language may be used: "The Code of the City of Tucker, Georgia, is hereby amended by adding a section (or chapter, article, division or subdivision, as appropriate) to be numbered _____, that reads as follows:" The new material may then be set out in full as desired.

(d) All sections, subdivisions, divisions, articles or chapters desired to be repealed should be specifically repealed by section, subdivision, division, article or chapter number, as the case may be.

Sec. 1-6. - Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the city. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances or resolutions and parts of ordinances or resolutions included in the supplemental, insofar as it is necessary to do so to embody them into a unified Code. For example, the person may:

- (1) Organize the ordinance material into appropriate subdivisions.
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement and make changes in such catchlines, headings and titles.
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated into the Code).
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinances inserted into the Code.

(d) In no case shall the person make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-7. - General penalty; continuing violations.

(a) In this section, the term "violation of this Code" or "violation of any such provision of this Code or any such ordinance" means:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a violation or a misdemeanor by ordinance, by statute adopted by reference in this Code, by state rule or regulation adopted by reference in this Code, or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance, by statute adopted by reference in this Code, by state rule or regulation adopted by reference in this Code, or by rule or regulation authorized by ordinance; or
- (3) Failure to perform an act if the failure is prohibited or is made or declared a violation or a misdemeanor or an offense or unlawful by ordinance, by statute adopted by reference in this Code, by state rule or regulation adopted by reference in this Code, or by rule or regulation authorized by ordinance.

(b) In this section, the term "violation of this Code" or "violation of any such provision of this Code or any such ordinance" does not include the failure of a city officer or city employee to perform an official duty, unless it is provided that failure to perform the duty is to be punished as provided in this section or it is clear from the context that it is the intent to impose the penalty provided for in this section upon the officer or employee.

(c) Except as otherwise provided:

(1) A person convicted of a violation of this Code shall be punished by a fine not exceeding \$1,000.00, imprisonment for a term not exceeding six months or any combination thereof.

(2) With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.

(3) With respect to violations of this Code that are not continuous with respect to time, each day the violation continues is a separate offense.

(d) All fines shall be paid into the city treasury.

(e) Community service may be substituted for the fine with the rate of hourly work set to that of the federal minimum wage.

(f) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise or other administrative sanctions.

(g) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief and by such other means as are provided by law. The imposition of a penalty does not prevent equitable relief.

Sec. 1-8. - Severability of Code.

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, that unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Code, since they would have been enacted without the incorporation in this Code of the unconstitutional, invalid or unenforceable phrase, clause, sentence, paragraph or section.

Sec. 1-9. - Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, insofar as they are the same as those of ordinances and resolutions existing at the time of adoption of this Code, shall be considered as continuations thereof and not as new enactments.

Sec. 1-10. - Prior offenses, penalties, contracts or rights not affected by adoption of Code.

(a) Nothing in this Code or the ordinance adopting this Code shall affect 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.

(b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance or resolution in effect on the date of adoption of this Code.

Sec. 1-11. - Rates, charges, and fees established.

(a) Unless otherwise provided for, all rates, charges, or fees necessary for the administration and enforcement of the provisions of this Code shall be as currently established or as hereafter adopted by motion, resolution or ordinance of the City Council, from time to time. Any rates, charges, or fees established by the City pursuant to the regulations or requirements established herein may be changed from time to time by the City Council, and such changes shall both be considered an amendment to this Code.

(b) Whenever any provision of this Code provides that a rate, charge, or fee shall be established by the city council, from time to time, and the amount of such rate, charge, or fee is not expressed in this Code in any dollar amount, then the amount of such rate, charge, or fee shall be the most recent and latest amount established, set or fixed by the city council by ordinance, resolution or motion.

Sec. 1-12. - Certain ordinances not affected by adoption of this Code.

(a) Nothing in this Code or the ordinance adopting this Code affects the validity of any the following ordinances or portions of ordinances not in this Code, which ordinances or portions of ordinances continue in full force and effect to the same extent as if published at length in this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract, established or accruing before the effective date of this Code.
- (2) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.
- (3) Authorizing or approving any contract, deed, or agreement.

- (4) Granting any right or franchise.
- (5) Making or approving any appropriation or budget.
- (6) Providing for salaries, employee benefits, and personnel policies and procedures not codified in this Code.
- (7) Adopting or amending the comprehensive plan.
- (8) Levying or imposing any special assessment.
- (9) Dedicating, establishing naming, locating, relocating, opening, paving, widening, repairing or vacating any street, sidewalk or alley.
- (10) Providing for or dedicating, accepting or vacating any plat or subdivision.
- (11) Levying, imposing or otherwise relating to taxes not codified in this Code.
- (12) Rezoning property or otherwise pertaining to zoning.
- (13) Prescribing traffic regulations for specific locations, prescribing through streets, bus stops, taxi stands, parking prohibitions, parking limitations, one-way traffic, limitations on load of vehicles or loading zones, consistent with this Code.
- (14) Describing or altering the boundaries of the city or annexing property to the city.
- (15) The administrative ordinances or resolutions of the city not in conflict or inconsistent with the provisions of this Code.
- (16) Any agreement with another political subdivision.
- (17) That is temporary, although general in effect.
- (18) That is special, although permanent in effect.
- (19) The purpose of which has been accomplished.

(b) Nor shall the repeal of any such ordinance or resolution be construed to revive any ordinance, resolution or part thereof that has been repealed or superseded by a subsequent ordinance or resolution which is repealed or superseded by this chapter. All such ordinances, resolutions and actions are recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

Sec. 1-13. - Altering Code, ordinance or other public document.

(a) It shall be unlawful for any person in the city to change or amend, by additions or deletions, any part of this Code, or to insert or delete pages or portions hereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

(b) It shall be unlawful for any person to deface, mutilate, or in any other manner alter any other document or record of the municipal government.

Sec. 1-14. - Document retention.

Pursuant to the Georgia Records Act, O.C.G.A. § 50-18-90 et seq., the city adopts the records management plan and record retention schedules recommended by the secretary of state as amended from time to time. The city clerk shall coordinate all records management for the city including storage, archiving, and destruction of records. Records shall be maintained according to approved retention schedules. All requests made under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., excepting standardized routine requests of the city police department, the city fire department, and the city municipal court shall be made to the city clerk. No record shall be destroyed except as provided in the approved retention schedule, provided, however, a written record may be destroyed if it is otherwise preserved by means of microfiche, scanning, or other reliable photographic or digital means as permitted by law. Changes to the retention schedules shall be adopted by resolution of the mayor and council.

Sec 1-15. Mayor Administer Oath of Office.

The Mayor shall have the authority to administer the oath of office for all non-elected personnel, employees, or agents of the City. The Chief of Police may administer the oath of office to all police officers and police personnel.

Sec. 1-16. - Subpoenas.

(a) The council, when sitting as a judicial or quasi-judicial body pursuant to public law, its charter, or its ordinances, shall compel the attendance of witnesses by subpoena under the same rules as prevail in the superior courts, and any witness who shall fail to respond to the subpoena, or who shall refuse to testify under oath, shall be guilty of contempt.

(b) The subpoenas as authorized in the preceding section shall bear witness in the name of the mayor; shall be issued by the city clerk; and shall be served by the police chief, any police officer, or by such other person as the mayor may designate.

(c) Should any person fail to respond to a subpoena of the council, after having been lawfully served, without good cause, or should the person refuse to testify under oath, then the council shall hold the person in contempt, and, in their discretion, punish the person by the imposition of a fine according to the maximum allowed by state law. Each of the failures or refusals herein described shall constitute a separate contempt.