

ARTICLE C

LIVESTOCK

Section 8-2023. Definition of terms

(a) Unless the context provides otherwise, the following definitions shall apply for purposes of this Article:

(1) Livestock. All animals of a domesticated agricultural nature, including, but not limited to, equine animals, bovine animals, sheep, goats, llamas and swine.

(2) Animal Units.

- (a) Cow. One animal unit is equal to one cow, whether beef or dairy.
- (b) Horse. One animal unit is equal to one horse.
- (c) Pony. One animal unit is equal to one pony.
- (d) Mule. One animal unit is equal to one mule.
- (e) Goat. One animal unit is equal to, but no more than, five goats.
- (f) Sheep. One animal unit is equal to, but no more than five sheep.

Section 8-2024. Keeping of livestock unlawful unless a permitted animal unit

No person may keep any livestock within the municipal limits of the Town of Windsor, except in accordance with a permit issued for an animal unit pursuant to this Article.

Section 8-2025. Permitted animal units

(a) No person shall stable, pasture, tie or otherwise keep within the Town limits an animal unit, as defined by this Article, that is nearer than 200 feet to the closest point of any dwelling, house, apartment, residence or business without first obtaining a written permit issued pursuant to the provisions of Section 8-2024 and Section 8-2025.

In addition, a permitted animal unit is required to be appropriately fenced and contained within an area suitable for the keeping of the animal unit, which area shall not be less than one acre for the first unit. One additional acre shall be required for each additional animal exceeding the number of animals permitted as a component of the first unit. The requirement of a distance of 200 feet from the closest point of a dwelling may be exempted upon the written consent of every property owner of each dwelling, house, apartment, residence or business nearer than 200 feet.

(b) An owner or possessor of any livestock that are within the Town limits on the effective date of this Article, or who is an owner or possessor on property that is newly annexed, has six (6) months to bring the property into compliance and to have obtained the permits required by this Article.

(c) Any person who obtains a permit in accordance with this Article shall also comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances, including, but not limited to, any registration requirements of the North Carolina Department of Agriculture and Consumer Services.

(d) A violation of any provision of this Article is hereby declared to be dangerous and prejudicial to the public health and safety and to constitute a public nuisance.

Section 8-2026. Application for permit

(a) An application pursuant to this Article shall be in writing and shall contain the following:

- (1) The type of animal to be permitted.
- (2) The number of animal units, and total number of animals, to be permitted.

(3) The number of acres to be permitted and the manner by which the animal unit shall be contained within the permitted acreage.

(4) Copy of aerial tax map showing location of area to be permitted, the adjoining landowners, and the required distance of 200 feet.

(5) Written permission signed by the landowner of the area to be permitted if the animal unit is to be kept upon lands not owned by the owner or possessor of the animal unit.

(6) Written permission, if applicable, of every owner of any dwelling, house, apartment, residence or business within the required distance of 200 feet who consents to a waiver of the required distance, which shall include the name(s), address(es) and telephone number(s) of such owner(s).

(7) Signature of each owner or possessor of the animal unit to be permitted certifying the truth of the application.

Section 8-2027. Approval or denial of permit

(a) Upon receipt of an application, the Town Administrator shall investigate and determine whether the application is properly filed and meets the requirements of this Article. If in compliance, the Town Administrator shall issue a signed written permit specifying the number of units or partial units to be stabled, pastured, tied or otherwise kept, the number of permitted acres, and the manner of fencing or containment. If not in compliance, the application shall be denied. In addition to the requirements of this Article, a permit may be denied when the applicant is or would be in violation of any federal, state, or other local laws, statutes, standards, regulations or ordinances.

Section 8-2028. Term of permit

(a) Each permit issued shall be valid until the first day of January next following the issuance of the permit. At any time within thirty (30) days before the expiration of a permit, the holder thereof must file an application for its renewal upon the same conditions as the original permit, which shall be signed and certified by the holder. In such event, if the Town Administrator determines that the applicant continues to meet the requirements for the permit, the Administrator shall renew the permit, which shall be valid for one year from the expiration of the prior permit. If renewal of the permit is denied, the provisions of Section 8-2030 hereinbelow shall apply.

Section 8-2029. Revocation of permit

(a) A permit shall be revoked by the Town Administrator upon any of the following circumstances:

(1) A finding by the Town Administrator that the stabling, pasturing, tying, or otherwise keeping of a permitted animal unit endangers the health or safety of inhabitants of the Town, when such finding is made as the result of the receipt and investigation of a written complaint from a Town citizen or owner of a business within the Town limits.

(2) A finding by the County or Town animal control officer that a permitted animal unit is being kept under inhumane or unsanitary conditions.

(3) A finding by the Town Administrator that a person who has obtained a valid permit is a chronic violator who has been given notice by the Town of a violation

of any provision of this Article at least three (3) times over a period of twelve (12) consecutive months.

Section 8-2030. Notice and hearing upon denial of application, revocation of permit, or other violation of this Article

(a) Upon the denial of an application, revocation of a permit, or upon a determination by the Town Administrator that there exists on any property conditions constituting a public nuisance in violation of this Article, the owner or possessor of the animal or animal unit, and the owner of the premises so affected, shall be notified by personal service pursuant to Rule 4 of the North Carolina Rules of Civil Procedure, or by certified and first-class mail. If the notice by certified mail is unclaimed or refused, but the first-class mail is not returned within ten (10) days after mailing, the first-class mail shall be sufficient to provide notice; provided, however, if service by first-class mail is so used, a copy of the notice shall be posted in a conspicuous place on the premises affected. In addition, if after due diligence the person's correct address cannot be determined, or personal service or service by certified mail cannot be accomplished, then the notice shall be posted conspicuously on the premises affected in lieu of service by publication. Service by posting may run concurrently with any other effort to effect service.

(b) The foregoing notice shall include a written explanation of the reasons for denial, revocation or other violation of this Article, and, if the violation pertains to a correctable condition, the actions that are necessary to correct and bring the property conditions into compliance within thirty (30) days.

(c) Any person or persons whose application is denied or has a permit revoked, or who otherwise is in violation of this Article, shall have thirty (30) days to correct or bring the property or condition into compliance or otherwise remove the animal or animal unit from the premises.

(d) Any person who is denied a permit, has a permit revoked, or otherwise has been determined to be in violation of this Article, shall have a right to appeal the decision. Appeal shall be made by giving written notice to the Town Administrator within ten (10) days of the date of the denial, and shall state the basis of the appeal. The Town Administrator shall then schedule and conduct a hearing within thirty (30), but not less than ten (10), days to determine if the permit should be denied or revoked. A properly filed appeal shall not affect the denial of a permit unless and until such time as the Town Administrator overturns the denial. A properly filed appeal shall toll the revocation of an existing permit until a decision is entered on the appeal by the Town Administrator. Upon hearing the matter, the Town Administrator shall either approve or reinstate the permit, or state reasons for the denial, revocation or other violation. If applicable, the order shall state the actions, if any, needed to remedy the violation, and the time allowed for voluntary abatement and compliance.

(e) Any person aggrieved by the decision of the Town Administrator after a hearing may petition the Superior Court for an injunction restraining the Town from carrying out the order or decision, which petition shall be filed within thirty (30) days after rendering of the decision.

(f) Notwithstanding any of the foregoing provisions of this Section, the Town may act summarily pursuant to G.S. 160A-193.

Section 8-2031. Abatement of nuisance by Town; impoundment

(a) The Town may act to abate the nuisance upon the occurrence of any of the following:

(1) A hearing is requested pursuant to Section 8-2030 above resulting in a final order, and such order is not complied with within thirty (30) days from adjournment of the hearing.

(2) No hearing is requested or held; and, the person having been given notice to abate such public nuisance pursuant to Section 8-2030(a), fails, neglects or refuses to abate or remove the condition constituting the nuisance within thirty (30) days from the date of the order.

(b) Upon the occurrence of any of the foregoing, the Town Administrator shall cause the condition or conditions to be removed or otherwise remedied by having employees of the Town go upon the premises and remove or otherwise abate such nuisance, specifically including, as applicable, the animal or animal unit under the supervision of an officer or employee designated by the Town Administrator. The foregoing action shall specifically include, as applicable, the removal of the animal or animal unit from the premises.

Section 8-2032. Charges for abatement by Town; lien

(a) The actual costs incurred by the Town in abating, removing or otherwise remedying a public nuisance pursuant to this Article shall be charged to the owner or possessor of the offending animal unit. Such costs shall also be a lien upon the land or

premises where the public nuisance existed and shall be collected as unpaid taxes as provided by G.S. §160A-200.1.

(b) In the event charges for removal or abatement of a public nuisance pursuant to this Article are not paid within thirty (30) days after receipt of a statement of charges from the Town, such charges shall bear interest at the rate of eight (8) percent per annum until paid.

Section 8-2033. Impoundment, Forfeiture Procedure, and Disposition of Animals

(a) When an animal or animal unit has been removed from the owner pursuant to Section 8-2031, the following procedures shall apply:

(1) Any animal or animal unit removed pursuant to Section 8-2031 shall be impounded for not less than five (5) week days. Such animal or animal unit shall be impounded in a humane manner.

(2) The Town Administrator shall make reasonable efforts to notify the owner of the animal unit. The notice shall include the following:

(A) An order that the owner contact the Town immediately.

(B) A brief statement of the date of impoundment and location of the animal unit.

(C) A statement that the animal or animal unit is subject to forfeiture and sale or otherwise disposal of in a humane manner within five (5) week days from the date of removal.

(D) A statement that a hearing will be held at the owner's request to determine if the animal shall be forfeited.

(E) A statement of the methods by which the owner may contact the Town.

(3) Prior to forfeiture of ownership pursuant to this Section, the owner of an impounded animal or animal unit shall be entitled, without a hearing, to redeem the animal or animal unit upon the following conditions:

(A) Payment of the expenses incurred by the Town for abatement and removal, sheltering, feeding and care of the animal or animal unit.

(B) The animal or animal unit cannot be released by the Town to the owner for keeping under conditions in violation of this Article.

(C) Payment of civil fines incurred by the owner under this Article.

(4) A hearing shall be held pursuant to this Section if the owner contacts the Town within five (5) days and requests the hearing. A representative or representatives of the Town shall present evidence for impoundment. The owner shall be entitled to present whatever relevant evidence the owner wishes and to have legal representation. All testimony shall be sworn, and the hearing shall be recorded. If physical evidence is presented by either side, the hearing officer shall have the evidence photographed as part of the record when possible and shall describe the item fully for the record. After conclusion of the evidence, the hearing officer shall make written findings, which shall include the following:

(A) Whether the animal or animal unit was properly impounded.

(B) Whether the Town has the authority to terminate ownership rights of the animal unit.

(C) Whether the ownership rights are being terminated.

(D) That any appeal to Superior Court of the hearing officer's decision must be filed within thirty (30) days.

(5) The decision of the hearing pursuant to Subsection (a)(4) hereinabove shall be subject to review by the Superior Court by proceeding in the nature of certiorari. Any person aggrieved by the decision may file a petition for writ of certiorari for review by the Superior Court, which shall be filed with the Clerk of Superior Court within thirty (30) days after delivery of, or reasonable efforts to deliver, the decision to the owner or possessor, or the owner's or possessor's representative. If a petition for writ of certiorari is filed in Superior Court, the animal or animal unit shall be confined at an animal shelter or other location solely acceptable to the Town pending any order otherwise by the Court.

(b) If the owner of the impounded animal or animal unit does not redeem the unit within the time provided for a hearing, or if ownership rights have been terminated after a hearing requested by the owner pursuant to Subsection (a)(4) above, the unclaimed animal or animal unit shall be deemed abandoned and its ownership rights terminated; and the animal or animal unit may be sold, adopted by a member of the general public, or otherwise disposed of or euthanized in a humane manner, as determined in the discretion of the Town Administrator, except no disposition shall be

made to a member of the public who is or would be in violation of this Article, or has been in violation within the last twelve (12) months.

(c) Notwithstanding the foregoing, when it is determined in the judgment of the Town Administrator, or the person in charge of a licensed facility where the animal or animal unit is impounded, that any impounded animal or animal unit should be destroyed for humane reasons, or to protect the public from imminent danger to persons or property, such animal may be destroyed without regard to any time limits otherwise established herein.

(d) Nothing in this Article shall prevent the Town from seizing, impounding or forfeiting an animal or animal unit pursuant to any other provision of federal or state law or regulation, including, but not limited to, G.S. §160A-193.

Section 8-2034. Exceptions and exemptions

(a) This ordinance shall not apply to the following:

(1) Parades or other special events sanctioned and approved by the Town.

(2) Municipal parks, whether permanent or temporary, including, but not limited to, Livermon Park or any other municipal animal park.

(b) This ordinance also shall not apply to the extraterritorial jurisdiction of the Town of Windsor.

Section 8-2035. Violations and penalties

(a) Misdemeanor. The violation of any provision of this Article shall be a misdemeanor and any person convicted of such violation shall be punishable as

provided in General Statutes 14-4 or other applicable law. Each violation of this Article (or if a continuing violation, each day in which the violation continues) is a separate offense. Each violation for each animal or animal unit is a separate offense. The fine for a criminal violation shall be up to \$500.00 or larger if allowed by G.S. 14-4. Misdemeanor violations shall be enforced by the issuance of citations or by arrest according to the same procedures used for other criminal violations. Payment of a fine imposed in criminal proceedings pursuant to this subsection does not affect the liability for fees or civil fines imposed under this Article.

(b) Civil fines. In addition to and independent of any criminal penalties and other sanctions provided in this Article, violations of this Article may also subject the offender to the civil penalties hereinafter set forth:

(1) The Windsor Police Department may issue a citation to the known owner or possessor of any animal or animal unit, or to any other violator of the provisions of this Article. Citations so issued may be delivered in person or mailed by certified or registered mail to the person charged if that person cannot be readily found. The citation shall impose upon the violator a civil penalty as set forth hereinbelow. The imposed civil penalty shall be paid in full to the Town within thirty (30) days of receipt of the citation assessing the civil penalty. This civil penalty is in addition to other fees or costs authorized by this Article.

(2) In the event that the owner or possessor of an animal or animal unit or other alleged violator does not respond to the above-described citation, or the applicable civil penalty is not paid within the time period prescribed, a civil action may

be commenced to recover the fine and costs associated with collection of the fine, and/or a criminal summons may be issued against the owner or other alleged violator of this Article and upon conviction, the owner shall be punished as provided by state law. The Windsor Police Department is expressly authorized to initiate and prosecute small claims actions in District Court to collect civil penalties and fees due to the Town of Windsor.

(3) The first violation of this Article shall subject the violator to a \$250.00 penalty; the second violation during a twelve month period shall be subject to a \$350.00 penalty; and the third and each subsequent violation during the twelve month period shall be subject to a \$500.00 penalty.

(4) Each violation of this Article is a separate fine. Each day in violation, and each animal unit kept in violation, shall be considered separate offenses; and may be fined for each violation individually.

(5) Any person who fails to pay a fine within a period of thirty (30) days after receiving a citation shall be deemed to have committed a misdemeanor and a warrant may be issued for the person's arrest. Prosecution under this section shall require proof of the occurrence of the underlying facts giving rise to the notice of citation.

(6) Violations taking place over continuous days shall be capped at ten (10) days per animal unit per violation unless there is evidence suggesting that the person has tried to interfere with an officer issuing or attempting to issue a citation, or obstruct justice, in which case additional fines may accrue.

(7) The final determination regarding the imposition and number of fines shall be determined by the Town and alternative settlements shall be allowed where appropriate.

(8) In accordance with Article IX Education, Section 7, of the North Carolina State Constitution, civil penalties collected under this Chapter shall be appropriated and used exclusively for maintaining free public schools.

(c) Civil citation. The issuance of a citation to have the owner insure compliance with this Article shall not affect the prosecution of a violation hereof as a misdemeanor as provided above. A citation shall:

(1) Give notice of the violation(s) alleged of the owner;

(2) State the civil penalties for such violation(s);

(3) State the date by which any civil penalties for such violation(s) must be paid; and

(4) State that the Town may initiate after such date a civil action to collect the civil penalties which are and may become due.

(d) Interference. It shall be unlawful for any person to interfere with, hinder, molest, resist or obstruct any employee or agent of the Town of Windsor in the performance of any duty authorized by law or ordinance, or to seek to release any animal or animal unit in the custody of such employees or agents (including from traps, cages, or other enclosures) except as specifically provided or authorized by the Town of Windsor.

(e) Enforcement. Enforcement of this Article may include any lawful action to prevent or remedy a violation, including, but not limited to, any appropriate equitable remedy, injunction or order of abatement issuing from a court of competent jurisdiction.