

Ordinance to repeal

Town of Hildebran

Action to repeal Town Code, Section 3: Nuisance Code and Violations, Section 3.01 - Section 3.05 and replace with the new proposed language below.

Section 3: Nuisance Code and Violations

Article 1: Nuisance

DIVISION 1. - General

Section 3-1.1. – Definitions

As used in this chapter, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates that a different meaning is intended:

Agent means the person who manages or has custody of a business building or the person to whom rent thereon, if any, is paid.

Apartment or apartment house or tenement house means every house, building, or portion thereof which is rented, leased, let or hired out to be occupied or is occupied as the house, home or residence of more than two families, living independently of each other and doing their cooking on the premises, or by more than one family upon a floor, so living and cooking, but having no common right in the halls, stairways, yards, water closets or privies.

Ashes means the residue from the burning of wood, coal, coke or other combustible material. "Ashes" shall not include cremated human remains.

Attached business unit means a structure of two or more business offices constructed as one unit, such as a dental office, medical office, insurance office or any other business in which the major activity is providing a service or is clerical in nature and does not in itself produce a product.

Brushwood means large, heavy yard trimmings resulting from heavy pruning or shrub removal with maximum six-inch diameter at large end;

Building material means lumber, brick, stone, dirt, carpet, plumbing materials, plaster, concrete, floor coverings, roofing material, gutters and other materials or substances accumulated as a result of new construction, repairs, remodeling, or additions to existing structures or accessory structures or demolition of such.

Bulk container means a commercially made metal container designed to store and hold rubbish and solid waste until the same can be collected for disposal, generally having a capacity of not less than four cubic yards nor more than eight cubic yards and capable of being serviced and emptied by automated machinery.

Bulk service means a customer that stores and disposes of rubbish and solid waste in a bulk container.

Business building means any structure, whether public or private, in the Town that is adapted for occupancy for transaction of business, for rendering of professional service, for amusement, for the display, sale or storage of goods, wares or merchandise or for the performance of work or labor, including, but not being limited to, hotels, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories in business

areas and all outhouses, sheds, barns and other structures on premises used for business purposes.

Collection means the act of removing solid waste from a point of generation to an approved disposal site.

Collection on private property means the act of removing solid waste from private developments for an additional fee from a point of generation to an approved disposal site. Collection shall be made at a mutually established location approved by the property manager and the Town manager or appointed designee for automated collection.

Commercial establishment means any structure or location, whether public or private, that is adapted for occupancy for the transaction of business, for the rendering of professional services, for amusement, for the display, sale or storage of goods, wares or merchandise, or for the performance of work or labor, including hotel rooms, rooming houses, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories and all other houses, sheds, barns and other structures on premises used for business purposes. "Commercial establishment" shall also include churches, houses of worship or other religious or eleemosynary institutions, regardless of size.

Construction and demolition waste means solid waste incident to maintenance, remodeling or new construction, including, but not limited to, mineral matter, wood, sheetrock, shingles and metal, but specifically excluding any substance which is contaminated by asbestos, lead based paint, or any other substance the disposal of which is regulated as a toxic or hazardous material.

Condominium means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Disabled person means any person who by reason of infirmity, or other physical or mental impairment is incapable of complying with the provisions of this chapter as it relates to the placement of refuse containers curbside. Included in the definition are children 12 years of age and under;

Family living unit means, but is not limited to, single-family residences, single mobile homes, single-family living units in duplexes, apartments, and other multifamily dwellings, but shall not include hotels or motels;

Fee means that charge by the Town associated with a good or service provided to or for the benefit of a customer.

Garbage means all putrescible wastes except sewage and body wastes, including all meat, vegetables and fruit refuse commonly resulting from the handling, preparation, cooking and consumption of food, from or on any premises within the Town limits.

Graffiti shall mean writings, drawings, inscriptions, figures, or marks of paint, ink, chalk, dye, or other similar substances on public or private buildings, sidewalks, streets, structures, or places which such marking are not authorized or permitted by the property owner or possessor. For the purpose of this chapter, graffiti shall include drawings, writings, markings, or inscriptions regardless of the content or the nature of the materials used in the act.

Nothing in this chapter shall be construed to prevent temporary, easily removable chalk or other water soluble markings on public or private sidewalks, streets or other paved surfaces which are used in connection with typical children's activities, such as drawings, or bases for stick ball, kickball, handball, hopscotch or other similar activities. Nothing in this chapter shall be construed

to prohibit temporary, easily removable chalk or other water soluble markings used in connections with any lawful business or public purpose or activity.

Hazardous household waste means any of the following materials, existing in a home because of their use in that home: pesticides; herbicides; petroleum products (epoxy resins, coal tar, polishes, thinners, mineral spirits, varnish, grease, caulking materials); solvents; acids (muriatic, hydrochloric, sulfuric, phosphoric); poisons (arsenic, lead, chrome and warfarin compounds); alkaline material (photo developers, sodium hydroxide, bleaches); oil based paints and stains, but not latex paints; batteries of all kinds, for cars, flashlights, smoke detectors, hearing aids, toys, watches and similar batteries; antifreeze; and used motor oil.

Hazardous material or hazardous waste. The following is an explanation of hazardous waste as published in the North Carolina Hazardous Waste Management Law adopted for the Federal Environmental Protection Agency (EPA). For the purposes of this chapter, the definition "hazardous waste" has been condensed. The terms defined are not inclusive of all items specified by the EPA regulations. Hazardous waste is defined as potentially dangerous byproducts of our highly industrialized society which cannot be handled, treated or disposed of without special precautions. It includes ignitable, corrosive, reactive and toxic waste such as acetone, gasoline and industrial alcohol, alkaline cleaners, acids, cyanide and chlorine, arsenic, pesticide wastes, paint, caustics, infected material, offal, fecal matter (human and animal), and explosives.

Health official means the chief health official of the County Health Department or any health department including County or any person whom he has authorized to perform any of the powers or duties conferred upon him by this article.

Hotels and motels means places of business whose primary business and the one in which they are normally and customarily engaged in supplying temporary living quarters with limited family living facilities for short periods of time.

Household sharp medical waste means any type of product capable of puncturing or lacerating the skin that is designed or used to treat, diagnose, or prevent a disease or medical condition, including, but not limited to, scalpels and hypodermic needles.

Industrial and commercial waste means those wastes, including solids, semisolids, sludge and liquids generated by an industry, commercial establishment or other manufacturing enterprise that is not classified as a hazardous waste or requires special handling such as oils, acids, etc.

Infectious waste means a solid waste capable of producing an infectious disease. Examples of waste designated as infectious are: micro-biological waste, pathological waste, blood products, improperly packaged sharps and all other waste as defined in the medical waste management regulation under 15A NCAC 13B.1200 in North Carolina Solid Waste Management rules.

Liquid waste means any waste material that is determined to contain free liquid as defined in Method 9095, Paint Filter Liquid Test, as described in Test Methods for Evaluating Solid Waste, Physical/Chemical Method, as published in the Environmental Protection Agency Publication No. SW-846 or any successor or equivalent publication.

Litter means any discarded man-made materials including, but not limited to, solid waste materials, industrial materials, household trash, business trash, building materials, scrap materials and hazardous waste as such terms are defined in this chapter and not properly containerized or prepared for collection and disposal.

Multifamily residential unit means two or more single-family dwellings constructed as one unit, such as apartment houses, motels, mobile home parks, townhouses, patio houses, or condominiums. Duplexes/triplexes built on public streets are not considered multifamily residential units.

Nuisance means any condition or use of property, or any act or omission affecting the condition or use of property, which directly threatens the safety of citizens; adversely affects the general health, happiness, security and welfare of others; or is detrimental to the rights of others to the full use of their own property and their own comfort, and happiness because of decreased property values and the unattractiveness and livability of neighborhoods. Further, the Town Council finds and declares that the following specific conditions are prejudicial to the general health, safety and welfare of the Town and its citizens; lessen the attractiveness and livability of the Town; and, when located on any lot or parcel of land within the Town limits, are a nuisance.

Occupant means the individual, firm, partnership or corporation that has the use of, controls or occupies any business building, apartment house or tenement house, or any portion thereof, whether owner or tenant. In the case of vacant business buildings, apartment houses or tenement houses, or any vacant portion of a business building, apartment house or tenement house, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.

Occupant means the person who has the use of or occupies any business building or any part thereof, or who has the use or possession, actual or constructive, of the premises, whether the actual owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, or in case of occupancy in whole or in part by the owner and agent of the building, such owner or agent shall be deemed to be and shall have the responsibility of an occupant of such building.

Opening means any opening in foundation, sides or walls, ground or first floor or basement, including chimneys, eaves, grills, windows, ventilators, walk grates, elevators and any pipes, wires or other installations through which a rat may enter.

Open place shall constitute any portion or area of a property not enclosed by walls, this shall include, but not be limited to, carports, patios, porches, decks, terraces, lean-tos, outbuildings, and the like, which are exposed to the exterior and/or public view, including, but not limited to, front, side, and/or rear yards. Tarps, plastic sheeting, canvas sheeting, unfinished building materials or the like shall not constitute walls.

Owner means the person owning the business building or premises, or agent of the building or premises, or the person to whom rent is paid; whether an individual, firm, partnership or corporation. In the case of business buildings leased or rented with a covenant in the lease or other agreement under which the lessee is responsible for maintenance and repairs, the lessee shall also be considered in such cases as the owner for the purpose of this chapter.

Physical disability means a medical condition, verified by a registered physician, that makes an individual physically unable to bring the automated refuse/automated recycling container to the curbside for collection and where there is no one else residing in the household capable of taking the containers to the curbside.

Premises means business houses, boardinghouses, rooming houses, offices, theaters, hotels, tourist camps, apartments, restaurants, cafes, bars, eating houses, hospitals, schools, private residences, mobile home parks, vacant lots and other places where garbage, trash or rubbish accumulates.

Private street means a street not open to public use, on private property, and not maintained by any governmental agency.

Private property means all of that property as described and set out in an owner's deed including, but not limited to, yards, grounds, driveways, entrances or passageways, parking areas,

storage areas, vacant land, bodies of water and including sidewalks, grass strips, one-half of alleys, curbs or rights-of-way up to the edge of the pavement of any public street.

Public street means the entire width between property lines, whatever nature, when any part thereof is dedicated or open to the use of the public as a matter of right for the purpose of vehicular or pedestrian traffic.

Public property means all that property except private property as herein defined, including but not limited to highways, streets, parks, recreation areas, sidewalks, grass strips, medians, curbs or rights-of-way up to the edge of the pavement of any public street or body of water.

Qualifying customer means a single-family detached home, duplex, or condominium regardless of the size of complex, or an apartment, tenement house or townhome which, when combined with all other units located on the premises, is comprised of not more than six family living units.

Rat eradication means the removal, killing, destruction and extermination of rats by systematic use of traps or by poisons and by other methods.

Rat harborage means any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside of a structure of any kind, including, but not limited to, conditions on vacant lots, creeks, branches, ditches, rubbish heaps, junkyards and any other places inside or outside of structures which afford shelter or provide a place or situation favoring the breeding, multiplication or continued existence of rats.

Rat stoppage or rat-proofing means a form of construction to prevent ingress of rats into business buildings from the exterior or from one building to another; it consists essentially of the closing, with material impervious to rat gnawing, of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground, by climbing or by burrowing.

Refuse means all solid wastes, including garbage, rubbish and trash.

Rollout container means a plastic or fiberglass container, having wheels for ease of movement and a lid which securely covers the bin designed to keep flies and other vermin from refuse, which is approximately 95 gallons in size and designed for the automatic collection of refuse by Town machinery.

Rubbish or trash means matter that is worthless or useless or of no substantial, practical value or matter that is of value only when it has decayed or has been recycled. Rubbish is solid waste, exclusive of garbage or ashes, including, but not limited to, leaves, pine needles, twigs, limbs and other such parts of trees not useful as timber and shall include the trunks and limbs of trees, even though useful for timber, when the same have been blown down or felled, either partially or totally, and which have become dried and flammable; tin or aluminum cans, bottles, papers, paper boxes or cartons, small light wood or crafting materials, rags, excelsior, rubber, leather, metals, wire or wire scraps, glass and crockery, but shall not include salvage automobiles, buses, or other items which in the judgment of the Town is likely to cause damage to equipment of the Town or injury to employees of the Town, or is likely because of the nature, size or weight of the material, to handicap or overburden the automated equipment.

Sharps container means a container specifically manufactured for the disposal of sharp medical waste.

Single business unit means any single nonresidential unit that generates no more garbage per week than can be placed or stored in a maximum of one rollout container with a total capacity of no more than 95 gallons when accumulated between collections, such as a dental office,

medical office, insurance office or another business in which the major activity is providing a service or is clerical in nature and does not in itself produce a product.

Single-family residential unit means any dwelling place occupied by one family and not defined as a multifamily residential unit.

Solid waste means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example and not by limitation, rubbish, garbage, commercial and industrial waste, scrap materials, junk, refuse, demolition and construction debris and landscape refuse, but shall not include sludge from air or water pollution control facilities, septic tank sludge or agricultural or unacceptable waste.

Solid waste disposal facility means any land or structure or combination of land area and structures, including dumps, landfills and transfer stations used for storing, transferring, collecting, separating, processing, recycling, recovering, treating, salvaging, reducing, incinerating or disposing of solid wastes.

Stationary bulk compactor means any Town approved container made of watertight construction that contains a packing mechanism and an internal or external power unit, and constructed so that the container can be emptied mechanically by means of automated equipment for the purpose of collection of solid waste.

Town home or town house means an apartment or other family living unit which is capable of ownership separate and apart from other portions of the structure to which it is conjoined or of which it may be a part, but of which there is no ownership interest in the common areas of the facility in the owner of the individual dwelling unit.

Unacceptable waste means items which are not appropriate for disposal through this means and includes, but is not limited to, sewage and its derivatives, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and hazardous waste.

Unit means one single-family residence or an individual apartment, motel room or suite, mobile home, townhouse, patio house, condominium, cluster home in a multifamily residence, unless otherwise specified by the Town.

Waste means all useless, unwanted, or discarded materials resulting from industrial, commercial, agricultural and residential activities.

White goods means large household appliances, regardless of actual color, including, but not limited to, refrigerators, stoves, washers, dryers, etc.

Yard waste means vegetative matter and other materials generated while providing normal maintenance to the yard areas adjacent to a single-family residential unit without earth, soil or other mineral matter attached thereto, including, but not limited to, leaves, grass, twigs, limbs, hedge trimmings, plant trimmings, and shrubs. This shall not include plastic or synthetic fibers, lumber, rocks, gravel, dirt or tree or shrubbery remains except as specifically authorized herein, or soil contaminated with hazardous waste.

Section 3-1.2. – Nuisance

Any condition specifically declared to be a danger to the public health, safety, morals and general welfare of inhabitants of the Town and a public nuisance by the Town Council or is in violation of any Town, county or state health regulation is considered to be a nuisance, as follows, but not limited to:

(1) Unfit Habitat

- (a) Whatever renders the air, food or water unwholesome.
- (b) Whatever building, erection, structure or part of cellar thereof is overcrowded or not provided with adequate means of ingress and egress or is not sufficiently supported, ventilated, drained, cleaned or lighted.
- (c) An occupied or used improvement thereon without utility services resulting in conditions which are detrimental to the health, safety or welfare of citizens and the peace and dignity of the Town.

(2) Unsanitary, stagnant, or inhibited water

- (a) Any stagnant water, to include all cellars and foundations of houses whose bottoms contain stagnant or putrid water.
- (b) Disease vectors. An open place of collection of water where insects tend to breed; permitting of any stagnant water, filth or any other matter harmful to health or comfort to remain on the premises of the owner or premises under control by the owner or person in control within the corporate limits after twenty-four (24) hours' notice of such condition;
- (c) All business organizations, such as public motor vehicle garages, service stations, dry cleaning establishments, and any other businesses or industrial organizations which shall discharge any petroleum products, chemicals or other such substances which would or could pollute any creek or stream within the zoning jurisdiction of the Town.
- (d) It shall be unlawful for any person to obstruct the flow of water in any stream or drainage way within the Town by throwing or placing stumps, brush, rubbish, litter or other material within or along the banks of any such stream or natural drainage way.
- (e) Any improper or inadequate drainage on private property which causes flooding, interferes with the use of, or endangers in any way the streets, sidewalks, parks or other Town-owned property of any kind; provided, that the notices required and powers conferred by this chapter by and on the public official in abating the nuisances defined by this paragraph shall be given and exercised by the Town manager or the director of public works;

(3) Rats, snakes, carcass and feral animals:

- (a) Any building or premises which is constructed or maintained in such a manner so as to provide food, shelter or protection for rats.
- (b) Firewood, if stored outdoors, shall be stacked orderly to prevent wildlife habitat.
- (c) Hides, dried or green, provided the same may be kept for sale in the Town when thoroughly cured and odorless;

(4) Junk:

- (a) Any furniture originally intended for indoor or interior use, outdoor furniture in disuse or disrepair,
- (b) Seating removed from motor vehicles,
- (c) Storage containers,
- (d) Automotive parts and/or supplies,

- (e) Inoperable appliances, exercise equipment.
- (f) Other metal products of any kind or nature kept within an open place which have jagged edges of metal or glass, or areas of confinement.
- (g) Junked motor vehicles on public grounds and private property (Reference Section 2: Abandoned, Junk and Nuisance Motor Vehicles).

(5) Plant Overgrowth

- (a) Weeds, grasses and/or other vegetation on one's residential, business, or vacant lot which is over 8 inches in height on the average or to permit such lot to serve as a breeding place for mosquitoes, as a refuge for rats and snakes, as a collecting place for trash and litter or as a fire hazard.. It will be the responsibility of the owner to cut and remove all weeds and other overgrown vegetation as often as necessary so as to comply with the provisions of this section. This provision shall not apply to lots greater than one acre, but shall be maintained in accordance with this provision to a depth of 20 feet from its property lines if and only if the adjacent property is occupied by a dwelling or other structure located within 50 feet of such property. This provision will not apply to wooded vacant lots that are more than 75 percent covered with mature trees, or property that consist of ravines, creek banks, or severe slopes which may cause the maintenance dangerous or unsafe. Furthermore this provision will not apply to vacant lots that are larger than three acres in size (i.e. Golf courses, farmland, vineyards, etc...). Natural means of plant removal is permitted on parcels of land greater than 200 acres;
- (b) A place of vines, shrubs or other vegetation over eight inches in height when such vines, shrubs or vegetation are a focal point for any other nuisance enumerated in this Code; provided, the nuisance herein defined by this subsection shall be cleared and cut only when it is necessary to abate any other nuisance described in this section;
- (c) A place of growth of noxious vegetation, including poison sumac (*Rhus vernix*), poison ivy (*Rhus radicans*) or poison oak (*Rhus Toxicodendron*), in a location likely to be accessible to the general public;
- (d) Any hedge, shrubbery, tree or plant along any street, alley or sidewalk planted closer than 18 inches or extending closer than 12 inches or lower than 14.5 feet to such street, alley or sidewalk, or any of the above-mentioned vegetation that obscures clear vision as located within the protected sight distance triangle.

(6) Trash and waste.

The storage of garbage and trash in containers as prescribed by this chapter and the regular collection thereof by the Town upon payment of fees and charges as provided in this chapter are hereby declared to be essential to the efficient operation of the Town and to the prevention of disease and protection to the public health. Any accumulation of rubbish or trash causing or threatening to cause the inhabitation therein of rats, mice, snakes or vermin of any kind.

- (1) Scattering of garbage or trash, storage of garbage or trash except in containers as provided by this chapter, or the accumulation of trash by reason of nonpayment of fees or charges for its removal is hereby declared to be a nuisance and a violation of this chapter.
- (2) Under no circumstances shall trash or garbage be allowed to accumulate or be stored for a period longer than 30 days.

- (3) Under no circumstances shall trash or garbage be dumped or stored on any right of way or in any alley or on any lot without being placed in proper containers as prescribed herein.
- (4) No industrial wastes, manure, debris from construction or repair work, leaves, trees or tree trimmings may be dumped or stored on any within any right of way or in any alley.
- (5) No owner or occupant of any premises shall prohibit or prevent weekly solid waste collection services at the premises.
- (6) An open place of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind.

(7) Public streets maintenance

- (a) Failure to clean or clear a public street, property, and adjoining sidewalks of any earth, sand or mud and debris related to a construction, timbering, or other similar land use project within 12 hours after notification by the Town for major and minor thoroughfares or within 24 hours after such notification for collector and local streets; however, if it is found by the Town that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable. This provision does not preempt any applicable federal, state, or county regulations applicable to said events.
- (b) Property owners are required to maintain any area of their property which is located between a public sidewalk and the curb of a paved street in accordance with the guidelines set forth in this section.

(8) Odor

- (a) Unsightly litter, foul or offensive odors which remain upon or emanate from a property.
- (b) Maintaining animals in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person.

(9) Construction materials: Lumber and building supplies, earth, sand and/or gravel on construction sites where the work is discontinued for a period of 60 days

(10) Graffiti, It shall be unlawful for any person owning property, acting as manager or agent for the owner of property, or in possession or control of property to fail to remove or effectively obscure any graffiti.

(11) Animals sanitation:

- (a) Any person owning, harboring, walking, in possession of or in charge of a dog, which defecates on public property, public park property, public right-of-way property or any private property without the permission of the private property owners, shall remove all feces immediately after it is deposited by the dog. All feces removed in accordance with this section shall be placed in a suitable bag or other container that closes and disposed of in a lawful manner.
- (b) Any person, while harboring, walking, in possession of or in charge of a dog on public property, public park property, public right-of-way or any private property without the permission of the private property owner, shall have in possession a bag or other container that closes, which is suitable for removing feces deposited by the dog.
- (c) The provisions of this Section shall not apply to visually impaired persons using dogs as guides.

(12) Abandoned Manufactured Homes, reference Article 5

State Law reference— Similar provisions, G.S. § 160A-193

Section 3-1.3. – Exceptions

Exceptions. The provisions contained in subsection 1.02. 4: Junk and 6: Trash and debris, shall not apply to commercial property owners, including, but not limited to, junk yard dealers, salvage companies, yard waste recycling operations, cement, quarry or other mining type businesses, whose operations include the accumulation, storage, sale, repair, or maintenance of such materials or objects and who have obtained all applicable zoning and operating permits and are following all applicable ordinances contained within the Code of Ordinances and the Zoning Ordinance. In addition, the provision contained in subsection 1.02.7.a. shall not apply to stockpiled rock, stone, gravel, sand, earth, or other similar materials on sites utilized and maintained by the North Carolina Department of Transportation or the municipality.

Section 3-1.4. – Notice.

- (a) Whenever the code official or appointed designee have determined that the conditions on a particular lot or parcel of land are a nuisance and should be abated or otherwise corrected, the code official or appointed designee shall give notice to the owner, lessee or other person in possession of the premises in writing setting forth the findings and describing the appropriate corrective action. The code official or appointed designee may establish a deadline, not to exceed sixty (60) days, for the abatement of the nuisance.
- (b) The notice may be served upon the owner, occupant or person in possession of the premises by at least one (1) of the following methods:
 - (1) By delivering a copy of the notice to the person or by leaving copies of the notice at the person's residence with some person of suitable age and discretion then residing on the premises;
 - (2) By mailing a copy of the notice by registered or certified mail, return receipt requested, addressed to the person to be served and delivered to the addressee;
 - (3) By delivering a copy of the notice to any official, employee or agent of a corporation, partnership or business; or
 - (4) If, after a due and diligent effort, the person cannot be located, by posting a copy of the written notice in a prominent place upon the real property.

Sec. 3-1.5. - Removal or abatement of nuisances.

Upon investigation and discovery of any of the conditions deemed a nuisance, the code official or appointed designee shall make a written report of his findings and may order that appropriate corrective action be taken, including the removal or abatement of such conditions by the person creating the nuisance or by the owner, occupant or other person in possession of the premises on which the nuisance is located. Prompt abatement is required within 10 days from the receipt of such written notice.

Sec 3-1.6. – Chronic Violator

The Town may notify a chronic violator of the Town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the Town shall, without further notice in the 12 month rolling period in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by certified mail. A chronic violator is a person who owns

property whereupon, in the previous calendar year, the Town gave notice of violation at least three times under any provision of the public nuisance ordinance.

State Law reference— Similar provisions, G.S. § 160A-200.1

Sec. 3-1.7. - Removal or abatement of other conditions.

Prior to ordering the removal of conditions which do not threaten the public safety or pose a general threat to the health, safety and general welfare of the citizens of the Town, the code official or appointed designee shall first determine that such conditions are visible from adjacent property or from a nearby street or highway and that the benefits of removing or correcting the conditions outweigh the burdens imposed upon the private property owner. Such findings shall be based upon a balancing of the monetary loss of the owner against the corresponding gain to the public by promoting or enhancing the community, neighborhood or area appearance, including protection of property values, indirect protection of public health and safety, preservation of the character and integrity of the community and the promotion of comfort and quality of life of area residents.

Sec. 3-1.8. - Appeal.

Within the time period stated in the notice to abate, the owner or occupant of the property where the nuisance exists may appeal the findings of the code official to the Board of Adjustment (BOA) by appearing before the BOA at the appeal hearing date and time given on said notice. The abatement of the nuisance will be postpone by the code official until the final determination for the appeal is made by the BOA. The BOA will need to make a 4/5 finding to overturn the code official's ruling. In the event no appeal is taken within the time period stated to abate, the code official may proceed to abate the nuisance.

Sec. 3-1.9. - Removal by Town.

If any person, having been ordered to abate a public nuisance pursuant to this chapter, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of such order, the designee may cause such condition to be removed or otherwise remedied by having employees of the Town or contracted work go upon such premises and remove or otherwise abate such nuisance under the supervision of an official or employee designated by the code official. Any person who has been ordered to abate a public nuisance may, within the time allowed by this chapter, request the Town, in writing, to remove such condition, the cost of which shall be paid by the person making such request. The Town may require such requestor to deposit some or all of the estimated cost of such removal prior to doing the work or may require the requestor to execute an agreement giving security for the payment of such costs.

Sec. 3-1.10. - Emergency action.

Notwithstanding the provisions of section 1.09, the code official or appointed designee shall have authority to summarily remove, abate or remedy or cause to be removed, abated or remedied, any condition that is dangerous or prejudicial to the public health or public safety.

Sec. 3-1.11. - Penalties.

- (a) Any violation of the articles of this chapter shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00). Violators shall be issued a written citation which must be paid within seventy-two (72) hours of receipt. Such citation shall be served by either first class mail, personal service or posted at the front door. Any of these methods of service shall be conclusively presumed to be valid, and no owner or occupant shall refuse service of the citation.

- (b) Each day's continuing violation shall be considered a separate and distinct offense.
- (c) Notwithstanding subsection (a) above, provisions of this chapter may be enforced through equitable remedies issued by a court of competent jurisdiction.
- (d) In addition to or in lieu of remedies authorized in subsections (a) and (c), violations of any articles of this chapter may be prosecuted as a misdemeanor or otherwise in accordance with G.S. §160A-175.

Sec. 3-1.12. - Right of entry.

The code official or appointed designee is hereby given full power and authority to enter upon the premises upon which a nuisance is found to exist under the provisions of this chapter for the purpose of abating the nuisance as provided in this chapter.

Sec. 3-1.13. - Cost of abatement declared lien.

- (a) The actual cost incurred by the Town in removing or otherwise remedying a public nuisance shall be charged to the owner of such lot or parcel of land, and it shall be the duty of the finance department or public services department to mail a statement of such charges to the owner or other person in possession of such premises, with instructions that such charges are due and payable within 30 days from the receipt thereof.
- (b) If charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges, such charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes
- (c) The procedure set forth in this chapter shall be in addition to any other remedies that may exist under law for the abatement of public nuisances, and this chapter shall not prevent the Town from proceeding in a criminal action against any person violating the provisions of this chapter.
- (d) All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. If any part of this ordinance shall be adjudged invalid, such adjudication shall apply only to such part so adjudged and the remainder of the ordinance shall be deemed valid and effective.

State Law reference— Authority for abatement of public nuisances, G.S. § 160A-193.

ARTICLE 2. – ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES

Sec. 3-2.01. - Administration.

The police department, fire department, and code official of the Town shall be responsible for the administration and enforcement of this article. The police department shall be responsible for administering the removal and disposition of vehicles determined to be "abandoned" on the public streets and highways within the Town and on property owned by the Town. The Town code official, with the assistance of the code official, Town planner, or fire department, shall be responsible for administering the removal and disposition of "abandoned," "nuisance" or "junked motor vehicles" located on private property. The Town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this article and applicable state laws. Nothing in this article shall be construed to limit the legal authority or powers

of the Town police department and fire department in enforcing other laws or in otherwise carrying out their duties.

Sec. 3-2.02. - Definitions.

For the purpose of this article, certain words and terms are defined as herein indicated:

Abandoned vehicle: As authorized and defined in G.S.§160A-303, an abandoned motor vehicle is one (1) that:

- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking; or
- (2) Is left on a public street or highway for longer than seven (7) days; or
- (3) Is left on property owned or operated by the Town for longer than twenty-four (24) hours; or
- (4) Is left on private property without the consent of the owner, occupant or lessee thereof, for longer than two (2) hours.

Authorizing official: The supervisory employee of the police department or the code official, respectively, designated to authorize the removal of vehicles under the provisions of this article.

Motor vehicle or vehicle: All machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

Junked motor vehicle: As authorized and defined in G.S. §160A-303.2 the term, junked motor vehicle means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- (3) Is more than five (5) years old and appears to be worth less than five hundred dollars (\$500.00).

Nuisance vehicle. A vehicle on public or private property that is determined and declared to be a health or safety hazard, or a public nuisance, or unlawful, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests; or
- (2) A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
- (3) A point of collection of pools or ponds of water; or
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor, visible presence; or
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, passenger interior, or other interior sections, etc.; or
- (6) So situated or located that there is a danger of its falling or turning over; or
- (7) One (1) which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

- (9) So offensive to the sight as to damage the community, neighborhood or area appearance; or
- (10) Used by children in play activities; or
- (11) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Council.

Sec. 3-2.03. - Abandoned vehicle unlawful; removal authorized.

- (a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.
- (b) Upon investigation, proper authorizing officials of the Town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

Sec. 3-2.04. - Nuisance vehicle unlawful; removal authorized.

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (b) Upon investigation, the code enforcement office may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined above, and order the vehicle removed.

Sec. 3-2.05. - Junked motor vehicle regulated; removal authorized.

- (a) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- (b) Subject to the provisions of subsection (c), upon investigation, the code official may order the removal of a junked motor vehicle as defined in this article after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:
 - (1) Protection of property values;
 - (2) Promotion of tourism and other economic development opportunities;
 - (3) Indirect protection of public health and safety;
 - (4) Preservation of the character and integrity of the community, and
 - (5) Promotion of the comfort, happiness and emotional stability of area residents.
- (c) Permitted concealment or enclosure of junked motor vehicle: Any other junked motor vehicle(s) must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle(s) cannot be seen from a public street or abutting property. A garage or building structure means one which is erected pursuant to the lawful issuance of a zoning permit and a building permit which has been constructed in accordance with all zoning and building code regulations.

Sec. 3-2.06. - Declared to be a health or safety hazard.

Any partially dismantled or wrecked vehicle, vehicle which is incapable of self-propulsion or being moved in the manner for which it was originally intended, vehicle left on private property without the consent of the owner, occupant or lessee thereof, or any junk motor vehicle is declared to be an attractive nuisance for children, a breeding place for rats and vermin, and a potential fire hazard. All vehicles abandoned upon privately owned property, which have been abandoned for as long as 30 days are declared to constitute a health and safety hazard.

Sec. 3-2.07. - Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements.

Except as set forth in section 2.08 below, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing addresses of the registered owner, or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, notice shall be given by first class mail (or any other method authorized for service by North Carolina Rules of Civil Procedure). The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to whom the notice is mailed, and the date mailed. If such names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle. The notice shall state that the vehicle will be removed by the Town on a specified date, no sooner than seven (7) days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

An order to remove abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, may be appealed by the registered owner or person entitled to possession to the BOA within the time period stated in the notice to remove by appearing before the BOA at the appeal hearing date and time given on the notice. Such appeal shall stay the order of removal until final determination by the BOA. The appeal shall consider the determination that the vehicle is abandoned, or in the case of a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens. In the event no appeal is taken within the time period stated in the notice to remove, the code official may proceed to remove the vehicle.

Sec. 3-2.08. - Exceptions to prior requirement.

The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include:

- (1) *Vehicles abandoned on the streets within the Town.* For vehicles left on the public streets or highways, the Town Council hereby determines that immediate removal of such vehicles therefrom for safekeeping by or under the direction of the police department, the department of planning and community development, or the department of public works, to a storage garage or area may be warranted when they are:
 - a. Obstructing traffic;

- b. Parked in violation of an ordinance prohibiting or restricting parking;
- c. Parked in a no-stopping or standing zone;
- d. Parked in loading zones;
- e. Parked in bus zones, or;
- f. Parked in violation of temporary parking restrictions imposed under Code sections.

(2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicles left on Town-owned property other than the streets and highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare; therefrom for safekeeping by or under the direction of the police department, the department of planning and community development, or the department of public works, to a storage garage or area. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

Sec. 3-2.09. - Removal from private property.

(a) Before any vehicle may be removed by the Town from private property as defined above to be abandon, junk or nuisance, the owner of the real property on which any such vehicle is located must be given at least five days' written notice from the Town of the vehicle removal. The owner may request in writing that the code official review the determination that the vehicle to be removed is in violation of the ordinance. No such vehicle shall be removed from privately owned premises without the written request of the owner, lessee or occupant of the premises on which the vehicle is located unless the vehicle has had the status of an abandoned vehicle on such privately owned premises for as long as 30 days and has, therefore, become a health and safety hazard in accordance with the declaration of the Council as set out in section 2.06. When a vehicle is removed from privately owned property at the request of a person, the person at whose request such vehicle is moved shall indemnify the Town against loss or expense incurred by reason of removal, storage or sale thereof.

Sec. 3-2.10. - Removal of vehicles; post-towing requirements.

Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the Town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the Town. Whenever such a vehicle is removed, the authorizing Town official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

- (1) The description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

The Town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in

subsections (1) through (5) above, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or agent.

If the vehicle is registered in North Carolina, notice shall be given within twenty-four (24) hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within seventy-two (72) hours from the removal of the vehicle.

Whenever an abandoned, nuisance or junked motor vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing Town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (1) through (5) above.

Sec. 3-2.11. - Right to probable cause hearing before sale or final disposition of vehicle.

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the county magistrate designated in G.S. §20-219.11(c) to receive such hearing requests, the magistrate will set the hearing within seventy-two (72) hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. §20-219.11 as amended.

Sec. 3-2.12. - Redemption of vehicle during proceedings.

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of such fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this article.

Sec. 3-2.13. - Sale and disposition of unclaimed vehicle.

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the Town and in accordance with Article 1 of Chapter 44A of the North Carolina General Statutes, except no probable cause hearing in addition to the hearing provided for in Section 2.11 is required.

State Law reference— Disposal of abandoned, nuisance or junked motor vehicle, by tow truck operator or towing business, G.S. § Art.1, Ch. 44A.

Sec. 3-2.14 - General penalty.

- (a) Except as set forth in subsection (b), violation of any provision of this Code or any other Town ordinance shall be a misdemeanor as provided by G.S. § 14-4(a).
- (b) Violation of any provision of this Code shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00), to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within a period of seventy-two (72) hours after he has been cited for violation of the ordinance. Citation shall be in writing, signed by the code official and shall be delivered or mailed to the offender either at the residence or

at the place of business or at the place where the violation occurred. Each day's continuing violation shall be a separate and distinct offense. Any action to recover such civil penalty may be joined in action for appropriate equitable or other legal remedy, including injunctions and orders of abatement and including an action to recover damages owing to the Town by reason of expenses incurred by the Town in abating, correcting, limiting and otherwise dealing with the harmful effects of the offending action.

Sec. 3-2.15. - Exceptions.

Nothing in this article shall apply to any vehicle:

- (1) Regulated under G.S. § 160A-303.2 which is kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. § 136-143, in accordance with the "Junkyard Control Act," G.S. § 136-141, et seq., or the removing or disposing of any motor vehicle that is used on a regular basis for business or personal use; and
- (2) Regulated under G.S. § 160A-303 which is in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the Town.

Sec. 3-2.16. - Unlawful removal of impounded vehicle.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the Town any vehicle which has been impounded pursuant to the provisions of this Code unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

State Law reference— Definition of junkyard, G.S. § 136-143, Junkyard Control Act, G.S. Junkyard Control Act, G.S. 136 136-141

Sec. 3-2.17. - Protection against criminal or civil liability.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance or junked motor vehicle, for disposing of such vehicle as provided in this article.