

## Chapter 94. Public Nuisances

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### **§ 94.01 CERTAIN CONDITIONS CONSTITUTE PUBLIC NUISANCE**

The existence of any of the following situations within the corporate limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance. It shall be the shared responsibility of the owner of record and/or the occupant to maintain grass and ground cover vegetation and to cut/remove grass, weeds or any accumulation of any noxious matter listed below as often as necessary to comply with the provisions of this subchapter. Any of the following situations shall be subject to the provisions of this subchapter.

(A) The uncontrolled growth of noxious weeds or grass to an average height in excess of 12 inches, when such uncontrolled growth situation is located:

- (1) on a lot within a platted residential subdivision, adjacent to improved property, and which has been graded or cleared of natural vegetation whether or not any further construction has occurred;
- (2) on a vacant lot greater than one acre in area when such uncontrolled growth is adjacent to improved property or a street (public or private), then limited to that portion of the site within 100 feet from any such adjacent improved property or public or private street;
- (3) on an improved property of any size, where at least one-third of the overall property includes such uncontrolled growth, such as only the rear yard of a house parcel;
- (4) on right-of-way or planting strip between sidewalk and curb or edge of pavement in front of any lot and adjacent to any public or private street. For purposes of this subchapter, "improved property" shall include any buildings, accessory structures, and/or any ground that has been surfaced with concrete, asphalt, gravel, or similar material, whether or not currently being used for any activity on-site. This subchapter shall not apply to any portions of any property which has been designated by any authorized governmental agency as undisturbed open space, water quality buffer area or BMP which utilizes a naturalized vegetative setting, or public road right-of-way designated and maintained as a naturalized planting area.

(B) Any accumulation of rubbish, trash or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(C) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(D) Any accumulation of fallen trees, dead trees, or tree limbs of a sufficient quantity to cause or threaten to cause the habitation of mosquitoes, rats, mice, or vermin, except where located only within portions of parcels that are heavily wooded.

(E) Any vacant unsecured building including but not limited to houses, apartments, nonresidential buildings and accessory buildings, which contribute to or are likely to contribute to blighted neighborhood conditions such as vagrancy, trash accumulation, alcohol or illegal drug use, trespassing, prostitution, or other criminal activities. For purposes of this subchapter, an “unsecured building” shall include a roofed structure with any opening on the exterior skin of the building such as broken windows, unlocked or missing doors, and which is large enough and within ground level reach for a human or animal to enter. Such opening may be completely unimpeded or may have a covering which is hinged or sliding but is not locked or stabilized to prevent entry.

(F) Any structure, the remains of a structure, or portion that is in a damaged condition as the result of fire, wind, flood, or other disaster and that remains in an unrepaired state for a period of 120 days from the date of the disaster, or from the date of conclusion of any criminal, legal, or insurance investigation following the disaster, when one or more of the following conditions is present on-site:

- (1) glass, metal or other sharp objects are in an accessible location;
- (2) any structure or any tree is unstable and may fall or collapse;
- (3) any substance is present that is hazardous or harmful to humans or animals;
- (4) any utility connections or lines, including but not limited to electric, natural gas, water, sewer, are in an accessible location and present a condition that may be hazardous or harmful to humans or animals.

(G) Any accumulation of demolition debris from structures or vegetation which remains on-site for longer than 30 days when no continuing construction or clean-up activity is progressing.

(H) Any dilapidated furniture, refrigerator, stove or other appliance, hot tub, Jacuzzi, machinery, equipment, building material, or other item which is either wholly or partially rusted, wrecked, junked, dismantled, or in an inoperative condition, and which is not completely enclosed within a building, when such item(s) could cause or threaten to cause: a fire hazard, or the accumulation of stagnant water, or cause or the inhabitation of mosquitoes, other insects, rats, mice, snakes or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(I) Any unmaintained swimming pool or its appurtenances which may be dangerous or prejudicial to public health and safety, including but not limited to pools with stagnant water, debris, dead animals or structural deficiencies, or which lacks proper swimming pool barriers as defined in the NC State Building Code.

(J) Any condition detrimental to the public health which violates the rules and regulations of the Mecklenburg County public health agencies.

## **§ 94.02 INVESTIGATION**

The Town Code Enforcement Officer or other responsible Town official or designee, upon notice from any person of the existence of any of the conditions in § 94.01, shall investigate the location to determine whether, in fact, those conditions exist as to constitute a public nuisance as declared in § 94.01.

## **§ 94.03 NOTICE TO ABATE**

Upon a determination that those conditions constituting a public nuisance exist, the Town Code Enforcement Officer or other responsible Town official or designee shall notify the owner of record, and/or the occupant or person in possession of the premises of the conditions constituting a public nuisance and shall order the prompt abatement within 15 days from the date of notice. Notice of violation of this subchapter shall be provided in writing in one or more of the following:

- (A) Written notice shall be either hand-delivered or mailed by first class mail to the owner of record and /or to any known occupant;
- (B) Additionally, written notice may be sent electronically (fax, e-mail, or similar) to the property owner and/or occupant where such connection can be determined;

(C) Written notice may be posted in a conspicuous location on the property, where it can be expected to be sheltered from wind or rain and remain legible for a period of at least 48 hours;

(D) Written notice may be published in a newspaper which covers news in the local Matthews area, in print and/or electronic form;

(E) Written notice may be sent by first class mail or electronically to any interested parties, including but not limited to a financial institution, mortgage company, attorney, or property management organization. The form or forms of notice delivery shall be documented, along with time and date of posting, mailing, or other method of delivery. Receipt of first-class mailing to the owner as listed in Mecklenburg County real estate tax records shall be assumed completed in absence of information provided to the Code Enforcement Officer to the contrary. The Code Enforcement Officer shall maintain this documentation, along with any verbal or written response to such notice(s). Effort shall be made to verify receipt of notice before the close of the 7-day appeal period.

#### **§ 94.04 REQUEST FOR APPEAL HEARING**

Within seven days from receipt of the notice provided for in § 94.03, the owner, occupant or person in possession of the premises may request a hearing before the Town Board of Commissioners and the Town Code Enforcement Officer whose investigation and findings resulted in the initial abatement order. The Town Board shall fix a time for the hearing, and the initial abatement order shall be temporarily suspended pending a hearing. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the abatement order. Upon completion of the hearing, the Town Board shall consider the evidence before them and shall either revoke the initial order, issue a final order which differs from the initial order, or reinstate the initial order as a final abatement order.

#### **§ 94.05 ABATEMENT PROCEDURE**

(A) Upon the occurrence of either of the following conditions, the Town Code Enforcement Officer or other responsible Town official or designee shall cause that condition to be removed or otherwise remedied by having Town employees or independent contractors to go upon those premises and remove or otherwise abate the identified nuisance under his/her supervision:

(1) A hearing is requested and held under § 94.04 resulting in either a final order with modifications or the reinstatement of the initial order as a final order, and such order is not complied with; or

(2) No hearing is requested or held, and the person having been ordered to abate that public nuisance fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order.

(B) Any person who has been finally ordered to abate a public nuisance may within the time allowed by this chapter request the town in writing to remove that condition, the cost of which shall be paid by the person making the request. The person making the request shall sign a statement indicating the estimated cost for abatement is understood, and full payment shall be made to the Town within 10 days after site work is completed.

#### **§ 94.06 CHRONIC VIOLATORS**

The Town Code Enforcement Officer or other responsible Town official or designee may provide notification as a chronic violator to any property owner of record when the violator's property is found to meet the public nuisance criteria listed at § 94.01. For purposes of this Chapter, a chronic violator is a person who was issued a notice of violation, declaring the owner's property a public nuisance under § 94.01 at least three (3) times in the previous calendar year. The Town Code Enforcement Officer shall issue the initial annual notice as a chronic violator by registered or certified mail, and may also use additional methods of posting or delivery of such initial annual notice. The Town Code Enforcement Officer shall without further notice in the calendar year in which notice is given as a chronic violator, take action to remedy or abate the violation, and the expense of the abatement action shall become a lien upon the property and shall be collected as unpaid taxes.

**§ 94.07 HOUSEHOLD ITEMS LEFT OUTSIDE**

(A) In order to assure public safety, it shall be unlawful for any person to leave outside any secured building or structure, in any place accessible to humans, any appliance, refrigerator, or other container for any period of time or for any purpose unless such appliance, refrigerator, or other container is altered such that all hinged or moveable compartments or openings are firmly secured and incapable of operating. This provision shall not apply to any appliance, refrigerator, or container which has been placed in, or adjacent to, a structure when allowed by zoning standards as accessory to a permitted use and is accessible only to persons involved with such permitted use, or when such appliance, refrigerator, or container is crated, strapped, secured or locked so that it is not plausible for a person to obtain access to any airtight compartment.

(B) Upon determination by the Town Code Enforcement Officer or other responsible Town official or designee that any item as listed in 94.07(A) above is in violation of this subchapter, a notice of violation shall be posted on the item or on the premises in a conspicuous location, calling for correction of the violation within 24 hours. The Town Code Enforcement Officer or Town Police officer shall also make reasonable attempt to contact the property owner and/or occupant of the premises to notify them of the violation. If such violation remains unabated beyond the 24 hours notice, the Town shall presume the item has been abandoned and is subject to being immediately secured in locked position or dismantled so as to be inoperable without further notice in order to assure public safety.

**§ 94.08 COST OF REMOVAL TO BE CHARGED TO OWNER OR OTHER PERSON IN POSSESSION**

The cost incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner or other person in possession of that lot or parcel of land. Within a 5-year period of the first abatement procedure, the second abatement procedure the property owner shall incur the cost incurred by the town to abate the nuisance plus \$100; a third abatement procedure within the first 5 years, the property owner shall pay the cost of the town's abatement procedure plus \$150; and any fourth or subsequent abatement procedure within the said 5 years, the property owner shall pay the cost of the town's abatement procedure process plus \$200 for each violation. At the end of the initial 5-year period, the process of abatement charges shall start all over. (Ord. 1925, passed 1-28-13)

**§ 94.09 UNPAID CHARGES TO BE LIEN ON PROPERTY**

In the event charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in § 94.08, those charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. § 160A-193.

**§ 94.10 OTHER REMEDIES**

The procedure set forth in this chapter shall be in addition to any other remedies that may now or hereafter 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, firm or corporation violating the provisions of this chapter as provided in G.S. § 14-4.

(Ord. No. 1752, passed 9-13-10)