

CHAPTER 155: NUISANCES

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GENERAL PROVISIONS

§ 155.01 PURPOSE AND OBJECTIVES.

(A) Purpose. This Chapter is enacted to protect the health, safety, and general welfare of the people of Alexander County pursuant to powers granted under NCGS 160D; the Alexander County Ordinances; subsequent recodifications and/or amendments; and other applicable ordinances as may be adopted in the future.

(B) Objectives. The principal objectives of this chapter are:

(1) To prevent injury and illness to occupants of property and the public and to remove public nuisances.

(2) To provide county wide standards for the abatement of public nuisances, including but not limited to solid waste, junked motor vehicles, and abandoned manufactured homes.

(3) To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public nuisances.

(4) To ensure proper actions may be taken to abate public nuisances.

§ 155.02 JURISDICTION AND EXCEPTION.

(A) Jurisdiction. This chapter shall apply to all the land within the corporate limits of Alexander County.

(B) Exception. This chapter shall not regulate property being actively used as a bona fide farm, or any tract of land used for dairying, the raising of agricultural products, forest products, livestock or poultry, or any other use defined as AGRICULTURE in § 154 of the County Code and including facilities for the sale of such products from the premises where produced.

§ 155.03 DEFINITIONS.

The following terms are defined for purposes of this chapter:

ABANDONED MANUFACTURED HOME. A manufactured home that has not had legal power or was not properly connected to a permitted septic/sewer system and water supply in the most recent six months, not to be interpreted to include a manufactured home stored or parked in accordance with a valid zoning permit.

ABANDONED STRUCTURE. Buildings, structures, and premises which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties.

ABATEMENT. The proper removal, repair, and/or containment of substances or materials hazardous to humans and/or the environment. Abatement is part of remediation.

BUILDING. Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels. Two buildings connected by a common roof shall be considered as one building, provided that the width of the connecting roof shall be at least 20% of the principal building width, but in no case less than six feet in width. The connection of two buildings by means of an open porch, breeze way or passageway without a roof, or with a roof less than six feet in width, shall not be deemed to make them one building.

JUNK. Any discarded, abandoned, or scrapped copper, brass, metal, rope, rags, batteries, appliances, paper or rubber; discarded, dismantled, abandoned, or wrecked automobiles or other vehicles or parts thereof; dismantled or abandoned mobile/manufactured homes or RV's or travel trailers or parts thereof; discarded, dismantled or wrecked motorized or non-motorized equipment or parts thereof; discarded or scrapped iron, steel or other scrapped ferrous material; or any other materials, items or equipment similar to those listed herein.

JUNKED MOTOR VEHICLE. A motor vehicle that does not display a current license plate or vehicle registration and is partially dismantled or wrecked, cannot be self-propelled or moved in the manner it was originally intended to move, or is more than

five years old and appears to be worth less than \$500 as provided by the municipality, or a junked motor vehicle as defined in G.S. 160A-303.2.

MANUFACTURED HOME. A single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976), as amended. For purposes of this chapter, however, the term also includes mobile homes.

OCCUPANT. Any person who occupies real property, whether with or without any right, title or interest in the property, and any person in possession or charge of such property, in the event the owner resides or is located elsewhere.

OWNER. Any person, persons, organization, or corporation that owns, in whole or in part, the land, structure, or other property or is the purchaser of the property under contract for deed.

PERSONAL PROPERTY. All property other than that defined in the definitions of PROPERTY and REAL PROPERTY, REAL ESTATE AND LAND of this section that is subject to ownership.

PLANNING AND DEVELOPMENT DEPARTMENT. The county department responsible for enforcing this chapter.

PROPERTY. Publicly or privately owned real property including parcels of land, buildings, or structures.

PROPERTY AGENT. A person authorized by a property owner to act in transacting business matters or in managing the affairs of the subject property.

PUBLIC NUISANCE. Any activity or use of property or personal property or failure to act that adversely affects the public and shall include, but is not limited to, any condition which poses an immediate and direct hazard to human health if left unheeded due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals, or other means of transmission or infections.

RECREATIONAL VEHICLE. A vehicular type of unit primarily designed as temporary and mobile living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on and drawn by another vehicle. The units do not satisfy the dimensional requirements of a manufactured home.

REMEDIATION. The action of stopping or reversing conditions, uses, substances or materials hazardous to humans and/or the environment or otherwise creating a nuisance.

VEHICLE RESTORATION PERMIT. A permit that allows persons to actively restore an unlicensed and unregistered vehicle.

§ 155.04 PROHIBITIONS.

The creation or maintenance of a public nuisance is prohibited. Without limiting the generality of the foregoing, the following are hereby expressly declared to be public nuisances:

(A) Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.

(B) An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.

(C) Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent proof container designed or reasonably adapted for such purpose.

(D) Accumulation of carcass(es) of animals, birds, or fish by failing to bury, store, or otherwise dispose of in a sanitary manner within 24 hours after death.

(E) Significant outdoor storage of solid waste including but not limited to: decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, furnaces, home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all-terrain vehicles, toys, bicycles, junk or any other substances in which flies, mosquitoes, other disease-carrying insects, rodents or other vermin can harbor.

(F) Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.

(G) Any junked motor vehicles on less than three acres of land without a current vehicle restoration permit and/or any abandoned manufactured home or abandoned structures as defined. This section shall not apply to vehicles stored in relation to the operation of a properly permitted repair garage or junkyard.

(H) Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.

(I) Breeding grounds which support mosquito larvae and mosquitoes capable of carrying diseases, or any other disease-causing microorganism.

(J) Use of a recreational vehicle as a primary residence that has not been approved by zoning.

(K) Recreational vehicles used to store solid waste.

(L) The growth of weeds and other rank vegetation on a business, residential, or vacant lot to a height of greater than two (2) foot on the average or to permit such lot to serve as a refuge for rats, mice, snakes or vermin, as a collection place for trash and litter or as a fire hazard. It shall be the duty of the property owner to cut and remove all weeds and other rank vegetation as often as necessary so as to comply with the provision of this Ordinance. This provision does not apply to lots exceeding one (1) acre

in size and contiguous lots in single ownership that exceed one (1) acre in size, nor to lots which are substantially covered with trees and bona-fide farm or permitted agricultural operations.

§ 155.05 OUTDOOR STORAGE.

Outdoor storage by commercial and industrial uses shall be limited to items that are designed and intended for permanent outdoor usage, storage, and/or sale. Outdoor storage areas in business and industrial zones shall conform to a minimum of one-half the minimum front building setback and not block or obstruct parking spaces or any line of sight for a public road.

ADMINISTRATION

§ 155.91 ADMINISTRATION AND ENFORCEMENT.

Where there is a violation of any provision of this chapter, the county, in its discretion, may require any appropriate action as described in this chapter.

(A) County ordinances. Except where otherwise specified, this chapter is subject to all provisions of the Alexander County Code. The Planning Director or their designee shall be responsible for the administration and enforcement of this chapter.

(B) Declaration as a public nuisance:

(1) It shall be the duty of the Planning and Development Department acting by and through its authorized delegate to determine whether a public nuisance exists. The Department shall act by and through complaints only.

(2) For purposes of emergency response and notification to applicable authorities and posting for the public, the Planning and Development Department may determine that a structure, property, or portion of a property constitutes an immediate environmental health nuisance pursuant to Chapter 130A and the North Carolina General Statutes and North Carolina Administrative Code. In the event the Department makes this determination the nuisance will be referred to the Alexander County Department of Public Health or Building Inspections for administration and abatement.

(C) Modifications to or dismissal of the public nuisance declaration.

(1) The Planning and Development Department may modify the conditions of the declaration or dismiss the declaration of a public nuisance.

(2) Such modifications or dismissal shall occur only after the Planning and Development Department has confirmed that the violation no longer exists or if there has been substantial and continuing improvement towards abating the nuisance.

(3) The Planning and Development Department will base its criteria for determining levels of nuisance on the best health and safety information available at the time of the declaration and cannot be held liable for future discoveries.

(4) For good cause shown, the owner or occupant may request authorization from the Planning and Development Department for an extension of time to complete abatement activities. An extension may be granted if the extension does not increase the risk to the public or safety and is deemed appropriate. Extensions may not be granted unless the owner or occupant shows substantial improvement toward abating the nuisance and shall be for a period of no longer than 30 days. Additional extensions shall be at the discretion of the Planning and Development Director and shall only be considered if there has been substantial and continuing improvement towards abating the nuisance.

(D) Access to premises and records. The owner or occupant shall, upon the request of the County and after proper identification, permit access to all parts of the site or structure where a nuisance has been declared as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this chapter. If the occupant will not permit entry upon the property, the Planning and Development Department shall complete the requirements of an administrative search warrant in order to inspect the complaint.

(E) Interference. No person shall in any way interfere with or hinder the Planning and Development Department in the performance of their duties or refuse access to gather information necessary to ascertain compliance with this chapter.

§ 155.92 INVESTIGATION AND RESPONSE TO PUBLIC NUISANCE.

(A) Owner notification. Upon declaration of a public nuisance, the Planning and Development Department shall give written notice of its determination and orders to abate the nuisance to the owner, occupant, and property agent, if applicable. The recipient of any such notice must take all action required within the time stated in the notice. This notice shall be served in person, by regular mail, or by an officer authorized to serve a warrant and contain the following:

(1) Property location by street address, parcel identification number, or other property description.

(2) Information identifying the nature of the public nuisance at the property.

(3) A summary of the owner's and occupant's responsibilities under this chapter.

(4) Specific orders for abatement or remediation of the public nuisance.

(5) A date for completion of the abatement not to exceed 30 days following the receipt of the notice unless a shorter time is required due to the Planning and Development Department's further determination that the immediate abatement is necessary to protect public and safety. In such cases, the reason for a shortened abatement period shall be specified.

(6) Information regarding a right of appeal as provided in § 155.94 of this chapter and that, unless the threat to public is abated or removed in accordance with the terms of the notice, the Planning and Development Department will have the public nuisance abated or removed at the expense of the owner under the provisions of this chapter and/or other applicable state or local law.

(B) Unknown or absent property owner. In the event the owner of the property is unknown or absent and has no known representative upon whom the notice can be served, the Planning and Development Department shall post a written or printed notice on the property stating that, unless the threat to the public is abated or removed within 30 days of the date of posting, the Planning and Development Department will have the public nuisance abated or removed at the expense of the owner under the provisions of this chapter and/or other applicable state or local law.

(C) Public notification. The Planning and Development Department shall provide information in writing about the public nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

(1) Child Protective Services Division of the Alexander County Department of Social Services in situations of potential child maltreatment or endangerment.

(2) Adult Protective Services Division of the Alexander County Department of Social Services in situations of potential vulnerable adult maltreatment or endangerment.

(3) Neighbors in proximity likely to be affected by the conditions found at the site.

(4) Local law enforcement officers.

(5) Alexander County Environmental Health.

(6) Other state and local authorities that may have public or environmental protection responsibilities.

(D) Warning sign. The Planning and Development Department shall post a warning sign when deemed necessary to further protect the public and safety. The warning sign shall be posted on the entrance(s) of the structure or property and contain information sufficient to alert visitors or returning occupants to the site that it may be dangerous to enter, that entry is prohibited unless authorized by the Planning and Development Department or law enforcement department posting the sign. Any person other than the Planning and Development Department or designated agent that removes a warning sign shall be in violation of this chapter.

(E) Abating public nuisance. If the owner, property agent or occupant fails or neglects to comply with the requirements in the notice provided under division (A) of this section, then the Planning and Development Department shall abate or remediate the public nuisance described in the notice. The county will recoup such costs as necessary to abate the public nuisance as provided in §155.99 of this chapter.

(F) Vacating the public nuisance order. Upon verification and acceptable proof of proper abatement, remediation, repair, or removal at the site, the Planning and Development Department shall issue written notice to those persons served notice under division (A) of this section that the public nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under division (C) of this section.

(G) Properties, identified by either PIN or Parcel ID number, that are found to have been in violation of this ordinance shall be placed under provisional status. Properties under provisional status will have seven (7) days to abate any identified nuisances before incurring civil penalties as outlined in § 155.99 (A). Provisional status shall begin on the first day any nuisance is considered abated, and last for one calendar year.

§ 155.93 VEHICLE RESTORATION PERMIT.

(A) Persons storing any motor vehicle for more than 30 days outside a fully enclosed permanent structure for the purpose of restoration shall obtain a vehicle restoration permit from the Planning and Development Department. The permit shall be placed in the vehicle in a location viewable from outside the vehicle.

(B) This permit shall allow for one restoration vehicle and up to one parts vehicle that must be compatible with the vehicle being restored.

(C) The permit allows for outdoor storage of the vehicle(s) for a period of up to six months.

(D) A maximum of two six-month extensions may be granted upon request, provided substantial progress can be proven in the restoration of the vehicle at each extension interval. Progress will be measured by receipts for the purchase of parts or services or visible reconstruction or deconstruction.

(E) At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil or becoming a harborage for vermin.

(F) If restoration work is not complete upon the permit expiration date, the vehicle shall be removed or placed inside a fully enclosed building as required by this chapter.

§ 155.94 APPEALS.

(A) Right of appeal. When a public nuisance is declared, an owner of the affected property may appeal the declaration, including an order for abatement or remediation, by filing a written request with the Alexander County Board of Adjustment.

(B) Hearing. If any owner makes a written request to the Board of Adjustment for an evidentiary hearing, such hearing shall be held in accordance with procedures as described in § 154.335 of the County Code.

(1) Schedule. The evidentiary hearing shall be held at the next available meeting that satisfies public notice requirements after the request for a hearing was received.

(2) Witnesses and evidence. All parties shall have full opportunity to respond to and present evidence and witnesses.

(3) Standard of proof. The appellant shall have the burden of proving its position by clear and convincing evidence.

(4) Rules of evidence. Hearings shall be informal, and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial, and repetitious evidence shall be excluded.

(C) Record of hearing. The hearing shall be recorded, and the minutes of the meeting shall be approved by the Board of Adjustment at their next scheduled meeting.

(D) Notice of decision. The decision of the Board of Adjustment shall be issued in writing within ten calendar days following the hearing. Unless otherwise provided by law, the decision of the Board of Adjustment shall constitute the final decision.

(E) Further appellate rights. Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than 30 calendar days after notice of the final decision has been issued from the Board of Adjustment.

§ 155.99 VIOLATIONS, PENALTIES, COSTS, AND REIMBURSEMENTS.

(A) Civil penalties. Unless otherwise specified in this chapter, any person who is an owner or occupant of property, and who violates this chapter, or permits a nuisance to exist on the property under their control, or fails to take action to abate the existence of the violation(s) within the time specified in the notice described in § 155.92 (B) above, when ordered or notified to do so by the Planning and Development Department, shall be subject to a civil penalty of \$50. Each day's violation shall be treated as a separate offense. Fines for violations that have gone unabated for longer than 30 days be increased to \$250 per day at the discretion of the Planning and Development Director. Fines for violations that have gone unabated for longer than 60 days be increased to \$500 per day at the discretion of the Planning and Development Director.

(B) Civil action. In the event of a violation of this ordinance or any order entered for abatement of a nuisance, the county may take appropriate action to enforce this chapter, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations. The county may recover all costs and expenditures expensed towards remedying the violation, including administrative time and attorneys' fees.

(C) Criminal violation. A violation of this ordinance is a Class 3 misdemeanor pursuant to G.S. § 14-4.

(D) If required to remove, abate or remediate a public nuisance, the county shall make every reasonable effort to recover costs incurred in removal, abatement or remediation in a civil action. The cost of enforcement action under this chapter may be assessed and charged against the real property on which the public nuisance was located. The county shall extend the cost as assessed and charged against said real property. Nothing herein precludes or limits the county from seeking recovery of costs through other methods allowed by Federal or state law.

(E) Subrogation rights. Nothing in this chapter is intended to limit the subrogation rights of any party and the owner occupants. The county shall maintain the right to recover costs, referenced in this section, from persons contributing to the damage.

(F) Revocation of development approvals. In addition to initiation of enforcement actions, county issued permits may be revoked by notifying the holder in writing stating the reason for the revocation. The County shall follow the same permit review and approval process required for issuance of the permit, including any required notice or hearing, in the review and approval of any revocation of that permit. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable element of this chapter; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state law or local ordinance may also be revoked. The revocation of a permit by a staff member may be appealed pursuant to G.S. § 160D-405.

§ 155.100 Abatement Procedures.

(A) If the County Code Enforcement Officer determines that no attempt to remedy properly noted violations has been made, they shall, by certified letter, notify the owner of the date, time, and place of a hearing to be held before the County Commissioners. The Commissioners will determine whether such a nuisance requires abatement.

(B) At this hearing the Code Enforcement Officer shall present their evidence of the facts and conditions constituting a nuisance. The property owner shall have the right to address the County Commissioners and present evidence. The property owner may also have an attorney present to speak on their behalf. Such a hearing shall not be required to be held in accordance with the rules of evidence as required for judicial hearings.

(C) Upon a determination that abatement of the nuisance is necessary the County Commissioners or their designee shall notify, in writing, the owner of the property, and order the prompt abatement thereof within twenty (20) days from the date of determination.