

# Chapter 10 – Nuisances

## Article 1. – IN GENERAL

### Sec. 10.1 – Described; Prohibited

- (1) Anything that causes offensive odor or that causes injury or damage to the health or life of any other person or anything that interferes with the peaceful enjoyment of one's property is hereby declared a nuisance.
- (2) It shall be unlawful for any person to create a nuisance on a lot owned or occupied by them or to allow a nuisance to remain on a lot owned or occupied by them.
- (3) The Town Council has found it necessary and desirable to promote or enhance:
  - (a) The quality of urban attractiveness and the aesthetic appearance of the Town;
  - (b) The protection of property values throughout the Town;
  - (c) The preservation of the livability and attractiveness of neighborhoods;
  - (d) The promotion of tourism, conventions, and other opportunities for economic development for the Town;
  - (e) The attractiveness of the Town's thoroughfares and commercial roads which present the primary, public visibility to visitors and passers-by of the Town; and
  - (f) The promotion of the comfort, happiness, and emotional stability of occupants of property in the vicinity of nuisances, junked, or neglected motor vehicles as defined in this Chapter.

### Section 10.2 – Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Abate / Abatement:** To cause the violation on a property to cease by removal of nuisance materials, vehicles, etc.

**Authorizing Official:** The Town Manager, or their assigns, designated to authorize the abatement of nuisances or removal of vehicles under the provisions of this Chapter.

**Building Materials:** Lumber, brick, stone carpet, plumbing materials, plaster, concrete, roofing, floor coverings, gutters or other materials or substances suitable for or commonly used in the construction or repair of houses, commercial buildings and other structures, driveways, fences, decks, landings, patios, porches or carports.

**Building Rubbish:** Rubbish from construction, remodeling, and repair operations on houses, commercial buildings, and other structures, including but not limited to stones, brick, plaster, lumber, concrete, and waste parts occasioned by installations and replacements.

**Chronic Violator:** As defined in N.C.G.S Section 160A.200.1(d) is any person who owns property whereupon, in the previous calendar year, the Town gave notice of violation at least three times under any provision of this Chapter.

**Combustible Refuse:** Refuse, capable of incineration or burning, such as garbage, paper, rags, boxes and wood.

**Dwelling:** A building or portion of a building providing complete and permanent living facilities, including cooking and bathing facilities.

**Garbage:** Animal and vegetable refuse resulting from the handling, preparation, cooking, and consumption of food, including a minimum amount of liquid necessary incident thereto.

**Harmful Insects:** Mosquitoes, ticks, fleas and flies and other arthropods which can be living transporters and transmitters of a causative agent of a disease.

**Junk:** Any furniture, appliances, machinery, equipment, building fixture, automotive parts, tires, or other similar items which is either in a wholly or partially rusted, wrecked, dismantled, or inoperative condition.

**Litter:** Any discarded manmade materials, including, but not limited to, garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, or motor vehicle part, solid waste materials, industrial materials and hazardous waste, or discarded material in any form resulting from domestic, industrial, commercial, medical or agricultural operations.

**Noxious:** Injurious to physical or mental health and capable of causing harm.

**Noxious Vegetation:** Plants that cause dermatitis through direct or indirect contact or plants that cause internal poisoning if eaten or ingested including but not limited to poison sumac, poison ivy or poison oak.

**Nuisance:** Any condition that is dangerous or prejudicial to the public health or public safety.

**Odor:** The property of a substance or that creates a distinctive and unpleasant smell. A noxious odor is one is injurious to physical or mental health and capable of causing physical harm, or negatively impacts the livability of surrounding properties or persons.

**Open Place:** A yard area, a vacant lot; a deck, landing, patio, porch or carport not totally enclosed by a roof, walls, screens or glass windows; or the parkway between the sidewalk and the street curb or pavement edge. The term does not include lands zoned for agriculture, wildlife sanctuary, or research farm.

**Weed:** Any undesired, uncultivated plant.

**White Goods:** Residential appliances limited to washing machines, clothes dryers, stoves, ranges, ovens, refrigerators, freezers, dishwashers, and water heaters.

**Yard Waste:** Grass, weeds, leaves, tree trimmings, plants, shrubbery prunings, and such other similar materials which are generated in the maintenance of yards and gardens.

### **Sec. 10.3 – Nuisances Prohibited; Enumeration**

Any of the following enumerated and described conditions occurring in an open place, or on public or private property is hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the Town of Tarboro and is found, deemed, and declared to be public nuisances wherever the same may exist and the creation, maintenance, or failure to abate any nuisances is hereby declared unlawful. Every such nuisance shall be abated pursuant to the abatement procedures as provided in Sections 10-4 through 10-7 of this Chapter.

- (1) The accumulation and existence of stagnant water, trash, debris, junk, or other noxious vegetation or material upon any lot or part thereof within the corporate limits of the Town of Tarboro.
- (2) Any place of dense growth of weeds or grasses, other than ornamental grasses, over ~~eight~~eight~~twelve~~ inches in height.
- (3) The storage outside of any building or dwelling in a place accessible to children of any abandoned, unattended or discarded icebox, refrigerator or any other container of any kind which has an airtight door, or lock which may not be released from opening from the inside of such icebox, refrigerator, or container.
- (4) Any condition which creates or provide a breeding ground or harbor for rodents, harmful insects, or pests.
- (5) A collection point or ponding of stagnant water with conditions causing, or likely to cause, mosquitoes or other harmful insects to breed.
- (6) Any concentration of combustible refuse.
- (7) Any concentration of building materials or building rubbish which are not suitable for building construction, alteration, or repair, or any concentration of building materials which becomes a focal point for any other nuisance enumerated in this Chapter.
- (8) Any concentration of collection of garbage, animal waste, yard waste, or any rotten or putrescible matter of any kind which is not maintained for collection. Nothing in this Section shall be construed to prevent the generally accepted use of a properly maintained compost pile sited in the side or rear yard area being used for fertilizer for lawns and gardens or other agricultural or horticultural purposes, unless such concentration becomes a focal point for any other nuisance enumerated in this Chapter.
- (9) Household or office furniture, any household fixtures, white goods or appliances, metal products of any kind and similar items not designed to withstand the elements or for outdoor use. This subsection shall not prevent:
  - (a) The use of household furniture on a totally enclosed porch having roof, walls, screens, or glass windows; or
  - (b) The use of furniture in good condition which is designed for outdoor use such as a patio or lawn furniture on porches or landings or in yard areas or other open places.
- (10) Any junk or concentration of litter.
- (11) Any other condition specifically declared to be a danger to the public health, safety, morals, and general welfare of the inhabitants of the Town of Tarboro and a public nuisance by the Town Council.

#### **Sec. 10-4. – Notice of Nuisance; Abatement Procedures**

It shall be the duty of any owner, lessee or occupant of any lot or land to maintain said lot or land in such a condition that none of the nuisances enumerated in Section 10.3 of this Chapter are allowed to exist or persist on public or private property, or in an open place. When any enumerated nuisance is found to exist on any property or open place, the following procedure shall be followed:

- (1) The Authorizing Official shall notify the owner of the premises where the nuisance is located that:
  - (a) The conditions identified in the notice of violation exist which constitute a public nuisance; and
  - (b) The Code provision(s) identified by Code section number are violated by the stated conditions on the property; and
  - (c) The Authorizing Official will assess civil penalties and administrative fee of one hundred dollars (\$100.00) for second notice of violation of the Nuisance Code provisions; and
  - (d) The Authorizing Official will assess civil penalties and administrative fee of two hundred fifty dollars (\$250.00), per day, for third and subsequent notice of violation of the Nuisance Code provisions occurring within twelve (12) months of the first such notice of violation, and
  - (e) Unless the public nuisance is abated within ten (10) calendar days from the mailing of the notice, the Authorizing Official will initiate the procedures to abate the conditions constituting a nuisance; and
  - (f) The cost of abatement, including an administrative fee of one hundred seventy-five dollars (\$175.00), also including the cost, if any, to reseed areas which were formerly a nuisance, shall constitute a lien against the premises.

#### **Sec. 10-5. – Right to Enter Property; Appeal**

- (1) The Authorizing Official is hereby given full power and authority to enter upon the premises involved for the purposes of abating the nuisance found to exist.
- (2) Within the ten-day period specified in Section 10-4(1)(d), the owner of the property where the nuisance exists may appeal the findings of the Authorizing Official made pursuant to Section 10.4(1)(a) by giving written notice of the appeal to the Authorizing Official. The appeal will stay the abatement of the nuisance by the Authorizing Official until a final determination by the Town Council. In the event no appeal is taken, the Authorizing Official may proceed to abate the nuisance.
- (3) Town Council, in the event that an appeal is taken, may, after hearing all interested persons and reviewing the findings of the Authorizing Official, reverse the findings made pursuant to Section 10-4(1)(a); but if the Town Council shall determine that the findings of the Authorizing Official made pursuant to this Chapter are correct, it shall adopt an ordinance specifically declaring the condition existing on the property to be a danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the Town and a public nuisance and directing the Authorizing Official to cause the conditions to be abated.

**Sec. 10-6. - Abatement by town.**

If the person upon whom the notice provided for in this article is served fails, neglects or refuses to correct the nuisance cited pursuant to Section 10-4 within ten (10) days after receipt of such notice, or if no person can be found in the Town who either is or claims to be the owner of such lot or land or who either represents or claims to represent such owner, the Authorizing Official may cause such nuisance to be abated.

**Sec. 10-7. - Recovery of town's cost of abatement.**

- (1) The expense of the action to abate a nuisance shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.
- (2) The expense of the action is also a lien on any other real property owned by the person in default within the Town limits or within one mile of the Town limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

**Sec. 10-8 – Annual Notice to Chronic Violators**

- (1) Pursuant to N.C.G.S 160A-200.1, the Town of Tarboro shall notify a chronic violator of this Chapter that, if the violator's property is found to be in violation of this Chapter, the Town shall, without further notice in the calendar year, take action to remedy the violation, and the expense shall become a lien upon the property and shall be collected as unpaid taxes.
- (2) This annual notice shall be sent registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

**Sec. 10-9. – Management of Grass Clippings and Vegetative Matter.**

- (1) In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into surface waters, stormwater drains, ditches, conveyances, watercourses, water bodies, wetlands, sidewalks or streets. Any material that is accidentally so deposited shall be immediately removed to the maximum extent possible.
- (2) Any person or company found in violation of said ordinance will first be issued a warning to immediately cease the violation by an authorized law enforcement officer. Any person or company found in violation of said ordinance a second time will be issued a civil citation in the amount of one hundred dollars (\$100.00) by an authorized law enforcement officer. Any person or company found in violation of said ordinance a third time will be issued a civil citation in the amount of two hundred fifty dollars (\$250.00) by an authorized law enforcement officer. Due to the nature of such violations, a notice of violation is not required to be mailed to or issued to the violator and no additional time is required to be given. In addition to remedies provided herein, any violation of the terms of this section shall subject the violator to the penalties and

remedies, either criminal or civil or both, as set forth in the Tarboro Code of Ordinances.

#### **Sec. 10-10 – Time Limits for Abatement**

Pursuant to N.C.G.S Sections 1.49 and 1.51, abatement of violations of this Chapter are subject to the following time limits:

- (1) Five years from the time that the facts constituting a violation become known to the Town Council, agent or employee of the Town.
- (2) Seven years from the time that a violation is visible from a public right-of-way or is in plain view from a place to which the public is invited.
- (3) These time limits do not apply to the remedy of conditions that are actually injurious or dangerous to the public health and safety.

#### **Sec. 10.11 – 10.24 Reserved**

## **Article II – ABANDONED, JUNKED, AND NEGLECTED MOTOR VEHICLES**

#### **Sec. 10-25 – Definitions**

**Abandoned Motor Vehicle:** As authorized and defined in G.S. Section 160A-303, is a vehicle that:

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

**Authorizing Official:** The Town Manager, or their assigns, designated to authorize the abatement of nuisances or removal of vehicles under the provisions of this Chapter.

**Classic Car:** A classic car is motor vehicle that is at least 20 years old and has been restored, is being restored, or operates in the manner in which it was originally intended.

**Driveway:** A vehicular access from a public or private street to a property or properties constructed of materials intended for vehicular traffic, such as asphalt, concrete, gravel or similar materials.

**Junked Motor Vehicle:** As authorized and defined in GS Section 160A-303.b2 means a vehicle that:

- (a) Is partially dismantled or wrecked; or
- (b) Cannot be self-propelled or moved in the manner in which it was intended to move; or

- (c) Is more than five years old and worth less than \$500, or;
- (d) Does not display a current license plate; or
- (e) Is not exempt from this Chapter as specified in Section 10.40.

**Motor Vehicle:** As defined in GS Section 160A-303.b means all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

**Neglected Motor Vehicle:** A motor vehicle on public or private property that is determined and declared to be a public nuisance, and unlawful, including a vehicle:

- (a) That does not leave the property upon which it is situated for 60 consecutive days; or
- (b) Not parked or stored within a substantially enclosed structure, such as a carport or garage; or is not covered by a UV protective covering that is intact and in good condition designed specifically for the motor vehicle; or,
- (c) Not parked within a driveway or delineated parking area specifically designed for vehicular parking.

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

- (a) A breeding ground or harbor for mosquitos, other insects, rats or other pests; or
- (b) A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
- (c) A point of collection of pools or ponds of water; or
- (d) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
- (e) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc; or
- (f) So situated or located that there is a danger of it falling or turning over; or
- (g) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible material of any kind; or
- (h) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (i) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Council.

#### **Sec. 10-26 – Administration**

- (1) The Police Department shall be the Authorizing Official 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.

- (2) The Town Manager, or designee, shall be the Authorizing Official responsible for administering the removal and disposition of abandoned, nuisance, junked, or neglected 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, neglected motor 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 officers of the town police department and fire department in enforcing other laws or in otherwise carrying out their duties.

**Sec. 10-27 – Abandoned Motor Vehicle**

- (1) It shall be unlawful for the registered owner or person entitled to the possession of a motor vehicle to cause or allow such motor vehicle to be abandoned.
- (2) Upon investigation, proper Authorizing Official of the Town may determine that a motor vehicle meets the definition of an abandoned motor vehicle and order the vehicle removed.

**Sec. 10-28 – Nuisance Motor Vehicle Unlawful; Removal Authorized**

- (1) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle or for the owner, lessee, or occupant upon real property upon which the vehicle is located to leave or allow the motor vehicle to remain on the property after it has been declared a nuisance motor vehicle.
- (2) Upon investigation, the Authorizing Official may determine that a motor vehicle is a health and safety hazard meeting the definition of a Nuisance Motor Vehicle, declare that the motor vehicle is a health or safety hazard, and order the motor vehicle removed.
- (3) Abatement of a nuisance motor vehicle violation shall follow the procedures outlined in Sections 10-4 through 10-7 of this Chapter.

**Sec. 10-29 – Junked Motor Vehicle Regulated; Removal Authorized**

- (1) 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 motor vehicle has been ordered removed.
- (2) It shall be unlawful to have a junked motor vehicle on the premises of public or private property.
- (3) Upon investigation, the Authorizing Official may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the motor 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:
  - a) Protection of property values; or
  - b) Promotion of tourism or other economic development opportunities; or
  - c) Indirect protection of public health and safety; or

- d) Preservation of the character and integrity of the community; or
  - e) Promotion of the comfort, happiness, and emotional stability of area residents.
- (4) Abatement of a junked motor vehicle violation shall follow the procedures outlined in Sections 10-4 through 10-7 of this Chapter.

**Sec. 10-30 – Neglected Motor Vehicle Regulated; Removal Authorized**

- (1) It shall be unlawful for the registered owner or person entitled to the possession of a neglected motor vehicle, or for the owner, lessee or occupant of the real property upon which a neglected motor vehicle is located to leave or allow the vehicle to remain on the property after the motor vehicle has been ordered removed.
- (2) It shall be unlawful to have a neglected motor vehicle on the premises of public or private property.
- (3) Upon investigation, the Authorizing Official may order the removal of a Neglected Motor Vehicle after finding in writing that the aesthetic benefits of removing the motor vehicle outweigh the burdens imposed on the private property. 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:
- (a) Protection of property values; or
  - (b) Promotion of tourism or other economic development opportunities; or
  - (c) Indirect protection of public health and safety; or
  - (d) Preservation of the character and integrity of the community; or
  - (e) Promotion of the comfort, happiness, and emotional stability of area residents.
- (4) Abatement of a neglected vehicle violation shall follow the procedures outlined in Sections 10-4 through 10-7 of this Chapter.

**Sec. 10-31 – Removal; Pre-Towing Notice Requirement**

- (1) Except as set forth in Section 10-33, an abandoned, nuisance, junked, or neglected motor vehicle shall be towed only after notice to the registered owner or person entitled to possession of the motor vehicle. In the case of a nuisance, junked, or neglected motor vehicle, if the name and mailing address of the registered owner or person entitled to the possession of the vehicle or owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first-class mail. The person who mails the notice shall retain a written record to show the name and address to which mailed and the date mailed. If such names and addresses cannot be ascertained or if the motor 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 motor vehicle a notice indicating that the motor vehicle will be removed by the Town on a specified date, no sooner than seven days after the notice is affixed. The notice shall state that the motor vehicle will be removed by the Town on a specified date, no sooner than seven days after the notice is affixed or mailed, unless the motor vehicle is moved by the owner or legal possessor prior to that time.

- (2) With respect to abandoned motor vehicles on private property, nuisance, junked, or neglected motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the motor vehicle but chooses to appeal the determination that the motor vehicle is abandoned, a nuisance, or in the case of junked or neglected motor vehicle that the aesthetic benefits of removing the motor vehicle outweigh the burdens, such appeal shall be made to the Town Council in writing, heard at the next regularly scheduled meeting of the Town Council, and further proceedings to remove the motor vehicle shall be stayed until the appeal is heard and decided.

#### **Sec. 10-32 – Exceptions to Prior Notice Requirement**

- (1) The requirement that notice be given prior to the removal of an abandoned, nuisance, junked, or neglected motor vehicle may, as determined by the Authorizing Official, be omitted in 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 motor vehicles without prior notice include:
  - (a) Motor Vehicles abandoned on the streets: For motor vehicles left on public streets and highways, the Town Council hereby determines that immediate removal of such motor vehicles may be warranted when they are:
    - (i) Obstructing traffic; or
    - (ii) Parked in violation of an ordinance prohibiting or restricting parking; or
    - (iii) Parking in a no-stopping or no-standing zone; or
    - (iv) Parked in a loading zone; or
    - (v) Parked in a bus zone; or
    - (vi) Parked in violation of a temporary parking restriction imposed under this Code.
  - (2) Other abandoned or nuisance motor vehicles: With respect to abandoned or nuisance motor vehicles left on city-owned property other than streets and highways and on private property, such motor 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. By way of illustration and not of limitation, such circumstances include motor vehicles blocking or obstructing ingress or egress to businesses and residences, motor vehicles parked in such a location or manner to pose a traffic hazard, and motor vehicles causing damage to public or private property.

#### **Sec. 10-33 – Removal of Motor Vehicle; Post-Towing Notice Requirements**

- (1) Any abandoned, nuisance, junked, or neglected 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 motor vehicle is removed, the Town shall immediately notify the last known registered owner of the motor vehicle, such notice to include the following:

- (a) The description of the removed motor vehicle; and
  - (b) The location where the motor vehicle is stored; and
  - (c) The violation with which the owner is charged, if any; and
  - (d) The procedure the owner must follow to redeem the motor vehicle; and
  - (e) The procedure the owner must follow to request a probable cause hearing on the removal.
- (2) The Town shall attempt to give notice to the motor vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set for in subsections (1)(a) through (1)(e) of this section, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the motor vehicle owner or their agent.
- (3) If the motor vehicle is registered in the State of North Carolina, notice shall be given within twenty-four hours. If the motor vehicle is not registered in the State of North Carolina, notice shall be given to the registered owner within seventy-two hours from the removal of the motor vehicle.
- (4) Whenever an abandoned, nuisance, junked, or neglected motor vehicle is removed and such motor vehicle has no valid registration or registration plates, the Authorizing Official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the motor vehicle and notify them of the information as set forth in subsections (1)(a) through (1)(e) of this section.

#### **Sec. 10-34 – Right to Hearing Before Sale or Final Disposition of Motor Vehicle**

After removal of an abandoned, nuisance, junked or neglected motor vehicle, the owner or any other person entitled to the possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the motor vehicle. A request for hearing must be filed in writing with the County Magistrate designated by the Chief District Court Judge to receive such hearing requests. The County Magistrate will set the hearing within seventy-two hours of the receipt of the request, and the hearing will be conducted in accordance with the provisions of N.C.G.S Section 20-222.

#### **Sec. 10-35 – Redemption of Vehicle During Proceedings**

At any stage of the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed motor vehicle by paying a 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 motor vehicle. Upon regaining possession of a motor vehicle, the owner or person entitled to the possession of the motor vehicle shall not allow or engage in further violation of this article.

#### **Sec. 10-36 – Sale and Disposition of Unclaimed Motor Vehicle**

Any abandoned, nuisance, junked, or neglected motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the Town or tow truck operator or towing business having custody of the motor vehicle. Disposition of such a motor vehicle shall be carried out in coordination with the Town and in accordance with N.C.G.S. Chapter 44A, Article 1.

#### **Sec. 10-37 – Conditions on Removal of Vehicle From Private Property**

As a general policy, the Town will not remove a motor vehicle from private property if the owner, occupant, or lessee of such property could have the motor vehicle removed under applicable state law procedures. In no case will a motor vehicle be removed by the Town from private property without a written request of the owner, occupant, or lessee, except in those cases where a motor vehicle is a nuisance, junked, or neglected motor vehicle which has been ordered removed by the Authorizing Official. The Town may require any person requesting the removal of an abandoned, nuisance, junked, or neglected motor vehicle from private property to indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

#### **Sec. 10-38 – Protection Against 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, junked, or neglected motor vehicle for disposing of such motor vehicle as provided for in this article.

#### **Sec. 10-39 – Unlawful Removal of an Impounded Vehicle**

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

#### **Sec. 10-40 – Exceptions**

Nothing in this article shall apply to any motor vehicle:

- (1) Which is located in a bona fide automobile graveyard or junkyard as defined in N.C.G.S Section 136-143, in accordance with the Junkyard Control Act, N.C.G.S Section 136.141 et seq; or
- (2) Which is in an enclosed building; or
- (3) Which is on the premises of a business enterprise being operated in a lawful place and manner if the motor vehicle is necessary to the operation of the enterprise; or
- (4) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the Town; or
- (5) Meeting the definition of a Classic Car as defined in this article. If a motor vehicle meeting the definition of a Classic Car is in the process of being restored to its original condition, the Classic Car must be covered with a UV protective cover designed specifically for the motor vehicle or within an enclosed structure when work on the motor vehicle is not active. Proof of active restoration efforts must be provided if requested by the Authorizing Official.

#### **Sec. 10.41 – 10.50 Reserved**

### **Article III – AIR POLLUTION**

#### **Sec. 10-51. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Dust:** Gas-borne particles larger than ten (10) microns in mean diameter.

**Dust-separating equipment:** Any device for separating dust from the gas medium in which it is carried.

**Fuel-burning equipment:** Any furnace, incinerator, refuse-burning equipment, boiler, apparatus, device, mechanism, stock or structure used in the process of burning fuel or combustible material.

**Fumes:** Gases or vapors that are of such character as to create an unclean, destructive, offensive or unhealthful condition.

**Internal combustion engine:** An engine in which combustion of a gaseous liquid or pulverized solid fuel takes place within one (1) or more cylinders.

**Open fire:** Any fire wherein the products of combustion are emitted into the open air and are not directed into the air through a stack or chimney.

**Ringelmann Smoke Chart:** The Ringelmann Chart with instructions for use as published by the U.S. Bureau of Mines, 1945.

**Smoke:** Small gas-borne particles consisting essentially of carbonaceous material in sufficient number to be observable.

**Soot:** agglomerated particles consisting essentially of carbonaceous material.

**Stack or chimney:** A flue, conduit or opening arranged for emitting gases into the open air.

**Volatile:** The gaseous constituents of solid fuels as determined by the standard A.S.T.M. procedure amended or revised to date.

#### **Sec. 10-52. - Inspection of Fuel-Burning Equipment.**

- (1) An inspection of any fuel-burning equipment within the town under the provisions of this article, whether or not a previous certificate of operation allowing the use of the plant has been issued by the town manager, may be made at any time to see that such equipment and plant can be operated in conformity with the provisions of this article. Upon notice that the equipment has been found to comply with the provisions of this article, the town manager shall issue a certificate of operation which shall be posted in a conspicuous place within the plant.
- (2) If at the time of the first inspection or of any inspection subsequent to the issuance of the certificate of operation it is found that the equipment is in such condition that it cannot be operated within the provisions of this article, the town manager shall give notice in writing to the person owning, operating or in charge of such equipment of the defects found and an order to correct, repair or replace the defective equipment, and it then becomes incumbent upon the owner or operator to comply with such orders. Failure to comply with this order within thirty (30) days from its date shall be a violation of this section, and the town manager is hereby authorized to seal the equipment.
- (3) Each day of failure to comply after the thirty-day period shall constitute a separate offense

#### **Sec. 10-53. - Right of Entry.**

Subject to constitutional limitations, no person shall in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the town manager or any of the personnel of his department in the performance of any duty required under the provisions of this article; nor shall any person refuse to permit such inspectors to perform their duty by refusing any of them entrance to the premises at reasonable hours.

**Sec. 10-54. - Smoke Indicators, Mirrors or Devices Required for Certain Fuel-Burning Plants.**

All newly constructed or reconstructed solid or liquid fuel-burning plants having more than five hundred (500) square feet of boiler heating surface (50 H.P.) or its equivalent shall be equipped with smoke indicators, mirrors or similar devices, approved by the town manager to enable the fireman to observe the top of the stack from the boiler room at all times, unless the top of the stack is readily visible to the fireman from the boiler room without the use of such devices. In plants where a fireman is not in constant attendance in the boiler room, the smoke indicator shall be of a type which will sound an alarm or flash a signal to attract the attention of the fireman. Any existing plant which emits unlawful smoke may be required to install such indicating devices.

**Sec. 10-55. - Standard for Grading Shade or Density of Smoke.**

For the purpose of grading the shade or density of smoke, the Ringelmann Chart as now published and used by the U.S. Bureau of Mines, which is hereby made a part of this article by reference, shall be the standard.

**Sec. 10-56. - Discharge of Smoke, Dust and Fumes.**

No person who operates or is responsible for the operation of any fuel-burning equipment, internal combustion engine, locomotive, vehicle, premises, open fire or stack shall cause, suffer or allow to be discharged therefrom any smoke, dust or fumes that are a nuisance to any person not being engaged in or upon the operation or that are a detriment or injurious to the health, welfare or property of others

**Sec. 10-57. - Emission of Smoke.**

- (1) The emission of smoke at any time within the corporate limits of the town of the shade or density greater than No. 2 of the Ringelmann Chart shall be a violation of this article.
- (2) No person who operates or is responsible for the operation of any fuel-burning equipment, internal combustion engine, premises, open fire or stack shall cause, suffer or allow to be discharged therefrom smoke the shade or density of which is equal to or greater than No. 2 of the Ringelmann Chart for a period aggregating four (4) minutes or more in any thirty (30) minutes, except smoke the shade or density of which is equal to No. 2 and not greater than No. 3 of the Ringelmann Chart may be emitted for a period aggregating three (3) minutes in any fifteen (15) minutes for the following reasons only: When building a new fire, cleaning a fire, or when breakdown of equipment occurs which makes it evident that the emission was not reasonably preventable.
- (3) No person who operates or is responsible for the operation of any locomotive or vehicle shall cause, suffer or allow to be discharged therefrom smoke, the shade or density of which is equal to or greater than No. 2 of the Ringelmann Chart, for a period aggregating more than one (1) minute in any fifteen (15) minutes, except smoke the shade or density of which is equal to No. 2 and not greater than No. 3 of the Ringelmann Chart may be emitted for a period or periods aggregating three (3) minutes in any fifteen (15) minutes for the following reasons only: When building a new fire, when cleaning fires or when the breakdown of equipment occurs which makes it evident that the emission was not reasonably preventable.

**Sec. 10-58. - Discharge of Dust.**

No person who operates or is responsible for the operation of any fuel-burning equipment shall cause, suffer or allow to be discharged therefrom or to pass any convenient measuring point in the stack thereof dust in the gases to exceed eighty-five hundredths pound per one thousand (1,000) pounds of gases, adjusted to twelve (12) percent CO<sub>2</sub> content. The amount of solids in the gases shall be determined according to the Test Code for Dust-Separating Apparatus of the American Society of Mechanical Engineers, revised and amended to date, which is hereby made a part of this article by reference.

**Sec. 10-59. - Liability for Violation.**

All persons owning, operating or in charge or control of any equipment who shall cause or permit or participate in any violation of any of the provisions of this article, either as proprietors, owners, lessees, tenants, managers, superintendents, constructors, installers, mechanics, repairmen, captains, janitors, engineers, firemen, or otherwise, shall be individually and collectively liable for any fines, penalties or punishment which may be imposed for the violation of this article.

**Sec. 10-60. - Sealing of Equipment in Violation.**

After any person who has been previously notified of three (3) or more violations of this article within any consecutive twelve-month period in respect to the emission of smoke, dust or fumes, that person shall be notified to show cause before the town manager on a specified day, to be not less than ten (10) days from the date of notice, why the equipment causing such violations should not be sealed. The notice provided for in this section may be given by mail directed to the last known address of the person to be notified or, if the address or the whereabouts is unknown, then by posting a notice on or near the premises at which the violations shall have occurred. Upon the date specified the person or representative of such person may appear and be heard. Upon such hearing, if the town manager finds that adequate corrective means and methods have not been employed to correct the complained of condition, then it shall be his duty to seal the equipment until such time as a new operating certificate, as provided under this article, has been applied for and issued. An appeal from this order may, within ten (10) days, be made to the town council, and such appeal shall act as a stay of decision by the town manager pending the decision of the town council.

**Sec. 10-61. - Violating Seal Placed on Equipment.**

No person shall violate the seal on any fuel-burning equipment that has been placed on the equipment by or at the direction of the town manager, unless first authorized in writing by him to do so.

**Sec. 10-62. - Appeals.**

Any person taking exception to any decision, ruling, regulation or order of the town manager made or promulgated under the provisions of this article may appeal to the town council. Such appeal shall be taken within ten (10) days after the decision, ruling, regulation or order complained of by filing, in writing, with the town manager a notice of appeal directed to the town council specifying the grounds thereof and the relief sought. A deposit of ten dollars (\$10.00) shall be posted by the appellant at the time of the appeal to cover the cost of the hearing. The town manager shall forthwith furnish to the town council all the papers relating to the decision, ruling, regulation or order which is appealed. The town council shall set a date not less than five (5) days and not more than forty (40) days after the date of filing of the appeal for the hearing and shall give notice thereof by mail to all interested parties. The appellant may appear at the hearing in person or may be represented by agent or by attorney. The town council shall

affirm, modify or set aside the decision of the town manager or shall make other disposition of the matter as in the opinion of the town council the good of the town may require. The decision of the town council in any such case shall be final.

**Secs. 10-63—10-90. - Reserved.**

## ARTICLE IV. - REMOVAL OF GRAFFITI

**Sec. 10-91. - Purpose and Intent.**

The purpose and intent of this article are to provide for the expeditious removal of graffiti on private property within the town. The town council declares such graffiti to be a nuisance by undermining (1) the quality of urban attractiveness and the aesthetic appearance of the town, (2) the protection of property values, (3) the preservation of the livability and attractiveness of neighborhoods, and (4) the promotion of opportunities for economic development of the town. In addition, the town council finds that such graffiti is frequently a means of communication by street gangs engaging in unlawful activity and is thereby injurious to the public welfare and safety.

**Sec. 10-92. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Graffiti:** Any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of private property, natural or manmade and that is exposed to public view, without the prior written consent of the property owner delivered to the person placing the graffiti on the property.

**Private property:** Any privately owned real property, including any fixtures or improvements to such property, located within the town's limits.

**Property owner:** The owner of the private property, such owner's manager or agent, or any other person in lawful control or possession of the property.

**Removal of graffiti:** The use of any method that has the effect of obscuring, erasing or otherwise removing the graffiti from public view.

**Sec. 10-93. - Failure to Remove Graffiti Unlawful.**

It is unlawful for any property owner to fail to remove, or fail to cause the removal of, graffiti in accordance with section 10-94 of this article.

**Sec. 10-94. - Procedures for Removal of Graffiti.**

- (a) Within seven (7) days after the property owner discovers the existence of graffiti on his private property or within seven (7) days after the property owner receives written notice from the town by registered or certified mail, return receipt requested, of the existence of graffiti on the owner's property, whichever event occurs earlier, the property owner shall remove or cause the graffiti to be removed from his property in accordance with paragraph (b) of this section.

- (b) The property owner shall either (1) remove the graffiti at the owner's expense, or (2) authorize the town to remove the graffiti at its own expense by signing an authorization of removal on a form prescribed by the town manager, along with a release that holds the town harmless from any liability to the owner on account of the town's removal of the graffiti in accordance with the removal method specified in the authorization of removal.
- (c) In the event the property owner authorizes the town to remove the graffiti at its own expense in accordance with subparagraph (b)(2) of this section, the town shall not be required to rectify any area defaced by the graffiti more extensively than where the graffiti itself is located and shall not be required to restore the area where the graffiti is removed to the area's original condition (i.e., exact color, textures, etc.).

**Sec. 10-95. - Penalties and Remedies.**

- (a) A violation of any provision of this article shall subject the offender to a civil penalty of two-hundred fifty dollars (\$250.00). If the offender fails to pay this penalty within ten (10) days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of a debt.
- (b) The town may seek to enforce this article through any appropriate equitable action.
- (c) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate violation.
- (d) The town may seek to enforce this article by using any one or a combination of the foregoing remedies.