

## CHAPTER 11

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## Article I

### DEFINITIONS

#### Section 11-1 Definitions.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

- 1) **Abandoned motor vehicle.** A vehicle that: (i) is left upon a street or highway in violation of a statute or town ordinance prohibiting parking; (ii) is left on property owned or operated by the town for longer than twenty-four hours; (iii) is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; (iv) is left on any public street or highway for longer than seven days; (v) is left on any privately owned public vehicular area contrary to an ordinance adopted under authority of G.S. 160A-301 (d); (vi) is left on private property in a properly designated fire lane; (vii) is left on public or private property in a space properly designated as reserved for handicapped or visually impaired person or in a manner that obstructs a curb cut or curb ramp for handicapped persons; or (viii) may for any other reason lawfully be towed by a law enforcement officer (except that vehicles seized for evidence or pursuant to a levy under execution or otherwise seized or forfeited under any state statute shall not be considered abandoned vehicles under this chapter).
- 2) **Code Enforcement Officer.** The person designated by the Council to perform the functions and exercise the responsibilities assigned by this chapter to the Code Enforcement Officer.
- 3) **Garbage.** All solid wastes capable of being rapidly decomposed by microorganisms, including but not limited to animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, as well as animal offal and carcasses, but excluding sewage and human wastes.
- 4) **Motor Vehicles.** Any machine designed or intended to travel over land or water by self-propulsion or while attached to a self-propelled vehicle.
- 5) **Refuse.** All solid wastes except (i) garbage and (ii) solids that are dissolved or suspended in domestic, commercial, or industrial waste effluent.
- 6) **Scrap materials.** Scrap materials are:
  - a) Pieces or fragments of metal, wood, glass, masonry, plastic, textiles, rope, leather, rubber, paper, or any other substance, that formerly were part of the construction of some useful object or thing or that consist of the excess resulting from the creation of some useful object or thing; or

- b) Objects or things, including but not limited to machines, tools, equipment, hardware, furniture, appliances, et cetera, or parts of the same that are no longer in serviceable condition or are valuable only as raw materials for reprocessing; or
- c) Motor vehicles or remnants thereof that (i) do not display current license plates, and (ii) cannot without substantial repairs be made to operate in the manner originally intended, and (iii) are valuable only as raw materials for reprocessing;

but that do not constitute solid wastes as herein defined because they are or may be useful to or wanted by or have not been discarded by the person in control of the premises where they have been located.

- 7) Solid wastes. Wastes that are nongaseous and nonliquid (except that liquid wastes resulting from the processing of food are deemed solid wastes for the purposes of this chapter).
- 8) Wastes. All useless, unwanted, or discarded materials resulting from domestic, industrial, commercial or community activities.

## Article II

### CONTROL OF SOLID WASTES, SCRAP MATERIALS, NOXIOUS GROWTH

#### Section 11-2 Accumulation of Solid Wastes.

- a) Subject to the qualifications contained in subsection (b), no person may cause, suffer, or permit solid wastes to accumulate or remain on premises under his control except that solid wastes may be stored on such premises in a manner that prepares them for collection at the next regularly scheduled pickup under the town's solid waste collection system.
- b) Natural solid waste materials resulting from lawn or garden work, such as bush and tree trimmings, leaves, grass, stumps, dirt and stones may be allowed to accumulate or remain on premises under a person's control unless these materials become or threaten to become a fire hazard or a harboring place for rats, mice, snakes, or other vermin or otherwise pose a danger to the public health or safety.

#### Section 11-3 Dumping or Littering on Public or Private Property.

No person may place, discard, throw, drop, or deposit, or cause to be placed, discarded, thrown, dropped, or deposited any solid wastes on:

- 1) Any public street or sidewalk within the town or on any property owned or operated by the town or any other public property, except in properly designated receptacles; or
- 2) Any property not owned by him without the consent of the owner, occupant, or lessee thereof.

(Note: G.S. 14-399 makes the acts prohibited in this section a misdemeanor, punishable by a fine of up to \$2,000. Therefore, this section may be enforced by the town only through civil penalties or injunctive relief.)

#### Section 11-4 Transportation of Solid Waste Within Town.

No person may transport or cause to be transported any solid wastes on the public streets of the town unless the solid wastes are so secured that no solid wastes escape from the transporting vehicle. In addition, any garbage so transported shall be carried in closed containers that prevent the escape of noxious odors or liquids.

#### Section 11-5 Burning or Burying Solid Wastes.

- a) No person may burn or cause to be burned any garbage for purposes of disposal, and no person may burn or cause to be burned any refuse except as specifically authorized by Section 12-14 of this code.
- b) No person may bury or cause to be buried any solid waste for purpose of disposal.

#### Section 11-6 Scrap Materials: Declaration of Policy.

The Council hereby declares that the uncontrolled accumulation of scrap materials on any premises constitute a danger to the health, safety, and welfare of the citizens of the town in that such accumulations can furnish shelter and breeding places for vermin, present physical dangers to the safety and well-being of children and other citizens, pose a danger of fire and depreciate property values or cause a loss of business by detracting from the appearance and character of residential and commercial neighborhoods.

#### Section 11-7 Accumulation of Scrap Materials.

No person may cause, suffer, or permit scrap materials to accumulate or remain on premises under his control unless the scrap materials are:

- a) Surrounded by a fence of sufficient height, strength, and construction to deny persons, especially small children, access to them and to shield neighboring properties from the view of them; or
- b) Are so stored within a structure or within a container outside of a structure as to minimize substantially the dangers set forth in Section 11-6.

Section 11-8 Noxious Growth.

No person may cause, suffer, or permit on premises under his control any growth of weeds, grasses, or other plants or bushes that become or threatens to become a fire hazard or a harboring place for rats, mice, snakes or other vermin or otherwise poses a danger to the public health or safety.

Sections 11-9 through 11-15 Reserved.

Article III

STORAGE AND COLLECTION OF SOLID WASTES

Sections 11-16 through 11-25 Reserved.

Article IV

ABANDONED MOTOR VEHICLES

Section 11-26 Removal of Abandoned Vehicles Authorized.

- a) Subject to subsection (b), whenever it is made to appear to appropriate town officials that abandoned motor vehicles exist within town limits, the town may have the vehicles removed and thereafter may dispose of them in accordance with the provisions of this article.
- b) No motor vehicle classified as abandoned because it is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours may be removed without the written request of the owner, occupant, or lessee of the premises. The town may require any person requesting the removal of such vehicle to indemnify the town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

Section 11-27 Notice Required Before Vehicle Removed.

- a) Before removing a vehicle under the circumstances specified herein, the town shall attempt to notify the owner of its intent to tow such vehicles as provided in subsections (b) and (c). This pre-towing notification is required before removing a vehicle:

- 1) That is classified as abandoned because it is (i) left on property owned or occupied by the town for longer than twenty-four hours, or (ii) left on any public street or highway for longer than seven days.
  - 2) That is classified as abandoned for any reason if such vehicle has neither a valid registration plate nor registration and the officer authorized the vehicle to be towed has made a reasonable but unsuccessful effort (including checking the vehicle identification number) to determine the owner of such vehicle, except that notification before towing such vehicle shall not be required if the vehicle impedes the flow of traffic or otherwise jeopardizes the public welfare so that immediate towing is necessary.
- b) The notice required under subsection (a) shall:
- 1) Identify the vehicle;
  - 2) Specify its location;
  - 3) State why the vehicle is subject to removal;
  - 4) Inform the owner that, unless the vehicle is removed by a specified date and time (which shall be at least seven days after the date the notice is mailed or posted under subsection (c)), the town shall have the vehicle removed, and that, in that event, all charges incident to the removal and storage of such vehicle will have to be paid before the vehicle may be reclaimed.
  - 5) Provide the owner with the name and phone number of a representative of the town who may be contacted to discuss any matter contained in the notice.
- c) The notice required in subsection (a) shall be sent by mail or posted on the vehicle as follows:
- 1) If notice is required under subdivision (a) (1), the notice shall be sent by mail to the owner of the vehicle at his last known address according to information derived from the registration number or vehicle identification number.
  - 2) If notice is required under subdivision (a) (2), this notice shall be posted on the vehicle's windshield or some other conspicuous place.

Section 11-28 Notice Required When Vehicle Removed.

- a) Whenever any abandoned motor vehicle is towed in accordance with this article, the town shall promptly give notification to the owner of the matters set forth in subsection (d), if the owner can with reasonable diligence be identified and contacted.

- b) If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within twenty-four hours. If the vehicle is not registered in this state, notice shall be given to the owner with seventy-two hours. This notice shall, if feasible, be given by telephone, but in any case notice shall also be mailed to the owner's address unless the owner or his agent waives this notice in writing.
- c) If the vehicle has neither a valid registration plate nor registration, then a reasonable effort shall be made (including checking the vehicle identification number) to identify the owner and notify him as promptly as possible of the matters set forth in subsection (d).
- d) The notice required under this section shall be sent by mail (certified, return receipt requested if the owner has not previously been reached by telephone) and shall:
  - 1) Contain a description of the vehicle;
  - 2) State why and under what authority the vehicle was removed and identify any violation with which the owner is charged;
  - 3) Explain where the vehicle is stored and what the owner must do to obtain possession (including paying the towing fee or posting a bond for double the amount of the fee);
  - 4) Inform the owner that he or she is entitled to request in writing a hearing before a magistrate to determine if probable cause existed for the towing. The notice shall further explain that if the magistrate finds probable cause did not exist, the tower's lien is extinguished and if the owner has already paid the towing fee, he or she will be entitled to reimbursement from the town.

#### Section 11-29 Use of Private Towing Operators.

The town may have vehicles removed under this article by private towing operators. Such private towing operators shall have a lien on the vehicles towed and may dispose of such vehicles in accordance with the provisions of Article 1 of G.S. Chapter 44A.

#### Section 11-30 Certain Vehicles Exempt.

The provisions of the article shall not apply to any vehicle 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.

#### Section 11-31 Motor Vehicles Dangerous or Prejudicial to the Public Health or Safety.

Nothing contained in this article shall be construed to limit the authority of the town to effect the removal or abatement of any motor vehicle, regardless of whether it is located on private property with the consent of the owner, lessee, occupant thereof, if the motor vehicle is found to

constitute a situation dangerous or prejudicial to the public health or safety in accordance with Part 2 of Article V of this chapter because it is found to be:

- 1) A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests; or
- 2) A point of heavy growth of weeds or other noxious vegetation over 8 inches in height; or
- 3) Point of collection for pools or ponds of water; or
- 4) A point of collection for pools or ponds of water; or
- 5) So located that there is danger of the vehicle falling or turning over; or
- 6) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside of from exposed surfaces of metal, glass, or other materials; or
- 7) A danger to the public health or safety for other reasons.

Sections 11-32 through 11-35 Reserved.

#### Article V

#### ABATEMENT OF PUBLIC NUISANCES

#### Section 11-36 Public Nuisances Declared.

The existence of any of the following conditions on any vacant lot or other parcel of land within the corporate limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance.

- a) The uncontrolled growth of weeds, grass or noxious growth to a height of 18 inches or more, causing or threatening to cause a hazard detrimental to the public health or safety.
- 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) The open storage of any abandoned icebox, refrigerator, stove, building material, building rubbish, inside furniture, metal, automobile parts, boxes or similar items.
- e) Any condition detrimental to the public health, safety and welfare or which violates the rules and regulations of the Gaston County Health Department.

Section 11-37 Code Enforcement Officer to Issue Notice of Abatement.

The Code Enforcement Officer, upon observation of the existence of any of the conditions described in Section 11.36, shall make such investigation as may be necessary to determine whether, in fact, such conditions exist as to constitute a public nuisance as declared in Section 11.36.

Section 11-38 Code Enforcement Officer to Issue Notice of Abatement.

- a) For purposes of this article, the respondent is the owner, occupant or person in possession of the property where a public nuisance as described in Section 11-36 is located.
- b) Upon a determination that conditions constituting a public nuisance exist as described in Section 11-36 (a), the Code Enforcement Officer shall notify the respondent by first class mail postage prepaid and/or by telephone of such conditions, and shall order the prompt abatement thereof within five (5) days of the receipt of such notice. When a respondent has failed to comply with a notice of violation as described above, the Code Enforcement Officer shall not be required to provide further notice of violation to that person with regard to the same property before taking any of the enforcement actions authorized by Article VI.

Section 11-39 Removal by Town upon Failure or Refusal of Owner to Obey Notice.

The Code Enforcement Officer may cause said condition to be removed or otherwise remedied by hiring appropriate independent contractors to go upon the premises and remove or otherwise abate such nuisance if the respondent, having been ordered to abate such a public nuisance, fails, neglects or refuses to abate or remove the condition constituting the nuisance within five (5) days from receipt of such order.

Section 11-40 Cost of Removal and Administrative Fee to be Paid by Owner.

The actual cost plus an administrative fee of 25% of 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 the owner shall pay these charges within 30 days after receiving a statement of charges from the town.

Section 11-41 Unpaid Charges to Be a 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 in Section 11-40, such 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 N.C.G.S. 160A-193.

Section 11-42 Inspections.

Whenever an inspection is necessary in an investigation required by this article, the Code Enforcement Officer is hereby empowered to enter upon the property upon which there is a reasonable cause to believe a violation exists at any reasonable time to inspect the property, but only if the consent of the person in possession is freely given or a search or inspections warrant is obtained as follows:

- a) At occupied property the Code Enforcement Officer shall first present credentials to the occupant and request entry, explaining the reasons for his request.
- b) If the property is not occupied, the Code Enforcement Officer shall first make a reasonable effort to locate the owner or person in control of the property, present proper credentials and request entry, explaining the reasons for his request.
- c) If the person in charge refuses entry to the Code Enforcement Officer or cannot be found after a reasonable effort, the Code Enforcement Officer shall obtain a warrant to search or inspect the property.

Section 11-43 Addition Remedies

The procedures 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 provision of this chapter, as provided in G.S. 14-4

Sections 11-44 through 11-50 Reserved.

Article VI

Enforcement

Section 11-51 Penalties and Remedies

- a) Criminal Penalty.

1) A violation of any of the following provisions of this chapter shall constitute a Class 3 misdemeanor, punishable as provided in N.C.G.S. 14-4 (a) by a fine of not more than five hundred dollars (\$500.00), except as provided below) or imprisonment by not more than 30 days. Fines for violations of Article II (except Section 11-3); Article III and Article V shall be one-hundred dollars (\$100.00) for each offense.

2) A violation of Article IV regulating abandoned motor vehicles shall constitute an infraction, punishable as provided in N.C.G.S. 14-3.1 AND 14-1(b) by a penalty of fifty dollars (\$50.00).

b) Civil Penalty.

A violation involving conditions that constitute a public nuisance in Articles II and V shall also subject the offender to a civil penalty of one hundred dollars (\$100.00) for the first offense, two hundred fifty dollars (\$250.00) for the second offense, and five hundred dollars (\$500.00) for the third offense. If the offender fails to pay this penalty with fifteen (15) calendar days after being cited for a violation, the penalty may be recovered by the town in a civil action in the nature of debt.

c) Separate and Distinct Offense.

Each day that any violation continues after a person has been notified that such violation exists and that he is subject to the penalties specific in subsection (a) and (b) shall constitute a separate and distinct offense.

d) The town may also, and in addition, seek and all appropriate equitable remedies, including injunction and/or abatement from the appropriate court of competent jurisdiction.

e) Combination of Remedies under N.C.G.S. 160A-175.

The town may enforce this chapter by any one, all or any combination of the foregoing remedies authorized by N.C.G.S. 160A-175.

