

ORDINANCE NUMBER _____

**AN ORDINANCE ENACTING THE REGULATION OF
PUBLIC NUISANCE CONDITIONS, PRIVATE PROPERTY
THE TOWN OF MINERAL SPRINGS**

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-174, et seq., delegates to municipalities the authority to exercise the general police power; and

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-193, authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

WHEREAS, the Town Council of the Town of Mineral Springs finds that it is in the public interest to enact an Ordinance to establish requirements for regulating Public Nuisance Conditions; and

WHEREAS, the Town Council of the Town of Mineral Springs, after due notice, conducted a public hearing on the _____ day of _____ 2017, upon the question of enacting this ordinance in this respect.

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINERAL SPRINGS, NORTH CAROLINA:

PART ONE. That an Ordinance entitled “Public Nuisance Conditions, Private Property”, of the Town of Mineral Springs, North Carolina, is hereby written and enacted to read as follows:

“PUBLIC NUISANCE CONDITIONS, PRIVATE PROPERTY

Section (A) Administration.

For the purpose of this Ordinance, the term "nuisance" shall mean or refer to any condition or any use of property or any act or omission affecting the condition or use of property which threatens or is likely to threaten the safety of the public; adversely affects the general health, happiness, security or welfare of others; or, is detrimental to the rights of others to the full use of their own property and their own comfort, happiness and emotional stability because of decreased property values and the unsightliness and decreased livability of neighborhoods.

Section (B) Declaration of Public Nuisance

The following enumerated and described conditions, or any combination thereof, are 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. They are hereby found, deemed and declared to be public nuisances wherever the conditions may exist within the corporate limits as

now or hereafter established. The creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

1. Any accumulation of trash, garbage, food waste and other trash which is the result of the absence of, or overflowing of, or improperly closed trash or garbage containers, that attracts or is likely to attract mice & rats, flies & mosquitoes or other pests.
2. An open place, collection, storage place or concentration of combustible items such as mattresses, boxes, paper, automobile tires & tubes, garbage, trash, refuse, brush, old clothes, rags or any other combustible materials collection, which are threatening to cause a fire hazard.
3. Any weeds or other vegetation having an overall height of more than twenty-four (24) inches above the surrounding ground, provided that the following shall not be considered to be a part of this condition: trees and ornamental shrubs; cultured plants; natural vegetation on undeveloped property that is not a threat to the character of surrounding properties; and flowers and growing & producing vegetable plants, including hay production.
4. An open storage place for old worn out, broken or discarded machinery, car parts, junk, tire rims, furniture, stoves, refrigerators, appliances, cans & containers, household goods, plumbing or electrical fixtures, old rusty metal, fencing materials or other similar materials.
5. A collection place for lumber, bricks, blocks, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating & air conditioning supplies or materials or any other type of old or unusable building supplies (especially those with nails, staples or sharp objects and edges) unless such conditions are temporary in nature and caused by a current construction project in progress pursuant to a lawfully issued building permit. Exception: In any case where the conditions identified in this subsection are located in the rear yard and entirely concealed from public view from a public street and/or abutting premises by an acceptable barrier such as a wall, a privacy fence, or vegetative barrier providing for complete concealment of the conditions and where such conditions do not cause further violation of any other subsection as described herein Section (B). Further, the storage of such materials, supplies, equipment, and similar items inside a completely enclosed building will not be considered in violation of this ordinance. The Code Administrator shall have the authority to determine whether such concealment is adequate as required by this provision.
6. Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is unsightly or hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the Code Administrator or his designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.
7. Nuisance vehicle: A 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 mosquitoes, other insects, rats or other pests; or

- b) A point of heavy growth of weeds or other noxious vegetation which exceeds twenty-four (24) inches in height; or
- c) In a condition allowing the collection of pools or ponds of water; or
- d) A concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
- e) An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods; or
- f) So situated or located that there is a danger of it falling or turning over; or
- g) A collection of garbage, food waste, animal waste, or any other rotten or putrescent matter 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 & safety hazard and a public nuisance by the Code Administrator.

Section (C) Complaint; Investigation of Public Nuisance

1. When any condition in violation of this ordinance is found to exist, the Code Administrator or such persons as may be designated by the Town Council shall give notice to the owner of the premises to abate or remove such conditions. Such notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected **prior to a specified date, (no sooner than 10 calendar days after the notice is mailed and/or affixed to the property)**, the Town may proceed to correct the same as authorized by this ordinance. Service of such notice shall be by any one of the following methods.

- (a) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of sixteen (16) years and a member of the family of the owner.
- (b) By depositing the notice in the United States Post Office addressed to the owner at his last known address with regular mail postage prepaid thereon.
- (c) By posting and keeping posted, for ten (10) days, a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served by method (a) and (b).

2. Where the enforcement official of the Town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

Section (D) Appeal from a Warning/Notice of Violation.

An appeal from a warning citation shall be taken within ten (10) days from the date of issue of said warning citation by filing with the Town Clerk and with the Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. The Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of this ordinance, in the factual situation as it relates to the application of an ordinance or both.

Section (E) Chronic Violator.

The town may notify a chronic violator of the town's public nuisance ordinance that, if the violator's property is found to be in violation of this chapter, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation. The expense of such action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by 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 10 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. A chronic violator is a person who owns property whereupon, in the previous calendar year, the town gave notice of violation at least three times under any provision of the public nuisance ordinance.

Section (F) Abatement Procedure.

If the owner of any property fails to comply with a notice given pursuant to this ordinance, **prior to the deadline stated in such notice**, he shall be subject to prosecution for violation of this ordinance in accordance with law and each day that such failure continues shall be a separate offense. In addition, the Town may have the condition described in the notice abated, removed or otherwise corrected and all expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All such expenses shall constitute a lien against the property on which the work was done.

Section (G) General Penalties.

1. An act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$50.00, which includes administrative fees. Each day any single violation continues shall be a separate violation. A violation of this ordinance shall not constitute a misdemeanor pursuant to N.C.G.S. 14-4. If the offender fails to correct this violation by the prescribed deadline after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.

2. In addition to the civil penalties set out above, any provision of this ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In

such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

3. In addition to the civil penalties set out above, the provisions of this ordinance may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of these provisions occur, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

4. Upon determination of a violation of any section of this ordinance, the enforcement official of the Town of Mineral Springs shall cause a warning citation to be issued to the violator. Such warning citation shall be issued either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation shall specify that a second citation may incur a civil penalty, together with costs, and attorney fees.

5. Upon failure of the violator to obey the warning citation, a civil citation may be issued by the enforcement official, either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear in person at the Town Hall to pay the citation within (15) fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations may be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

6. If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein, the Town of Mineral Springs may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

Section (H) Procedure Is Alternative

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances.”

PART TWO. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

PART THREE. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

PART FOUR. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

PART FIVE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this _____ day of _____, 2017.

Frederick Becker III, Mayor

ATTEST:

Approved as to form:

Vicky Brooks, Town Clerk

Bobby H. Griffin, Town Attorney