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TITLE VIII: OFFENSES

Chapter

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- 81. ANIMALS**
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- 83. WEEDS, GRASS AND REFUSE**
- 84. NOISE**
- 85. MISCELLANEOUS OFFENSES**

CHAPTER 81: ANIMALS

Section

- 81.01 Dangerous dogs; nuisance dogs
- 81.02 Limitation on number of dogs allowed
- 81.03 Dogs running at large prohibited
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- 81.06 Impoundment
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81.99 Penalty

Statutory reference:

Authority to prohibit and prevent animals from running at large, see G.S. # 160A-186

Domestic animals, authority to regulate, see G.S. 160A-186

81.01 DANGEROUS DOGS; NUISANCE DOGS.

(A) The keeping or maintenance outside a proper enclosure of any vicious dog or dog having dangerous or destructive propensities is declared to be a public nuisance, and shall be abated as provided in this chapter.

(B) The keeping or maintenance of any dog which by prolonged and habitual barking, howling, or whining causes serious annoyance to neighboring residents and interfere with the reasonable use and enjoyment of the public streets, sidewalks or other public areas, is declared to be a public nuisance, and shall be abated as provided in this chapter.

(C) It shall be unlawful for any owner to keep on his lot or premises any dog or puppy, the keeping of which results in such unsanitary conditions, odors or insect proliferation or which such dog or puppy barks, cries, howls, yaps, fights or makes such other noises, as to disturb the peace and quiet of the neighborhood or general public and results in a neighborhood or public nuisance and to fail to abate the same upon warning from the Police Chief.

(D) *Complaint and notice.* On receipt of a written detailed and signed complaint being made to the town by any resident that any person is maintaining a public nuisance as described in # 81.02 above, the Police Chief shall cause the owner or keeper of the dog in question to be notified that a complaint has been received, and shall cause the situation complained of to be investigated and a report and findings written.

(E) *Abatement.* If the written findings of the investigation indicate that the complaint is justified, then the Police Chief shall cause the owner or keeper of the dog in question to be so notified in writing, and ordered to abate the nuisance within 48 hours by destruction or removal of the dog, or by construction of a proper enclosure, as the case may necessitate.

(F) *Impoundment on failure to abate; destruction.* If any person being the owner or keeper of a dog hereinabove described, shall fail or refuse to abate the nuisance on order of the town within the specified time, the Police Chief shall cause the dog in question to be apprehended and impounded in a suitable place, such as the Avery County Humane Society Shelter, and held, redeemed, sold, or destroyed in accordance with the rules established by the Avery County Humane Society Shelter ordinance.

Penalty, see # 81.99

81.02 LIMITATION ON NUMBER OF DOGS ALLOWED.

It shall be unlawful for any owner to keep more than four dogs within the town.

Penalty, see # 81.99

81.03 DOGS RUNNING AT LARGE PROHIBITED.

It shall be unlawful for any owner to allow any dog or his to run at large within the town. At no time will a dog or puppy be tied, penned, confined nor will a dog house or dog pen be placed in the side area located between residences. Dog houses and dog pens shall be considered as an accessory building and the placement of such must conform with the town's regulations. The placement of a dog house or dog pen shall be limited to solely the rear yard and must meet the setback requirements for accessory buildings as delineated in the zoning ordinance of the town. Dog pens and dog houses will be a minimum of 35 feet from neighbors' residential dwellings.

Penalty, see # 81.99

81.04 FEMALE DOGS IN HEAT.

It shall be unlawful for the owner of any female dog which is in estrus to keep the same within the town during that period, except when confined to the premises of the owner, or of another person with such person's consent. Any person breeding a female dog more than once a year for the purpose of selling the resulting litter will be considered as operating a business and will be subject to the regulatory provisions of the town's zoning ordinance. In addition, for those individuals possessing four female dogs it shall be permissible to breed only one female during any 12-month period.

Penalty, see 81.99

81.05 RABIES.

Whenever any dog is suspected, or has shown any symptoms of having rabies, or has been bitten by any dog or other animal showing such symptoms, or has bitten any persons, the owner of the dog shall immediately confine the dog to his premises in such a manner that it could not bite any other animal or person, and immediately notify the Police Chief of the circumstances and action, and shall keep such dog confined in a manner, in such place and for such time and treatment as the Animal Control Officer may direct. If the Animal Control Officer deems it necessary or expedient, or the owner so desires, a licensed veterinarian may be called in, at the owner's expense, for the purpose of diagnosis and treatment, and in such case such veterinarian is satisfied that such dog has rabies, the Police Chief shall cause the dog to be humanely killed forthwith.

Penalty, see # 81.99

81.06 CERTAIN DOGS TO BE CAPTURED AND IMPOUNDED.

Whenever the Police Chief or other employee or agent of the town discovers any dog running at large or in other violation of the provisions of this chapter, the Animal Control Officer shall be notified and shall be authorized to capture such dog and cause it to be impounded in the Avery County Humane Society and held, redeemed, sold, or destroyed in accordance with the rules established by the Avery County Humane Society Shelter; provided, however, if such dog shows any symptoms, or is reasonably suspected, of having rabies, or appears of such vicious nature as to make it reasonably appear that such animal at the time constitutes a menace to the safety of the one seeking to capture it or any other person, then the animal control officer may shoot, or otherwise kill the same on the spot, in as humane a manner as practical and with due regard to the safety of others. If such dog is able to escape all capture attempts, the Animal Control Officer shall employ a tranquilizer gun to catch the animal.

81.07 BIRD SANCTUARY.

(A) The area embraced within the corporate limits of the town and all lands owned or leased by the town outside the corporate limits are hereby designated as a bird sanctuary.

(B) It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established by division (A) above, any domestic or wild bird, provided, that in accordance with G.S. # 160A-188 it shall be unlawful to trap, hunt, shoot or otherwise kill starlings, English sparrows, blackbirds (except red-winged blackbirds) and other birds having an "unprotected" status under the law.

Penalty, see 81.99

Statutory reference: Establishment of bird sanctuaries authorized, see G.S. # 160A-188

81.09

Adopted April 7, 2015

No person may keep within the Town any Livestock and/or Fowl except in accordance with this section.

- (A) It shall be unlawful for any person to maintain, keep, house or stable any: horse, mule, pony, cow, sheep, goat, swine or any other livestock including ducks, geese, turkeys, guineas within the corporate limits of the Town
- (B) It shall be unlawful for any person to maintain, keep or house any cattle, goat, horse, swine, ducks, geese, turkeys, guineas or any other livestock within the corporate limits of Town.
- (C) Any existing farm areas will be grandfathered in to this ordinance. If nuisance laws are violated action can be taken to remove area's privilege.
- (D) Violation of this Ordinance: Penalties
 - (1) First Violation: Warning, written can be requested
 - (2) Second Violation: Notice of seven (7) days to remedy or rid property of violation animal.
 - (3) \$50 fine per day beginning eighth (8th) day that removal has not occurred until remedied.

81.08 RECORDS.

It shall be the duty of the Police Chief to keep or cause to be kept accurate detailed records of:

- (A) Impoundment and disposition of all animals picked up by the Animal Control Officer;
and
(B) Bite cases, violation, complaints, and investigations of same.

81.99 PENALTY.

(A) *Criminal misdemeanor.* Notwithstanding any civil penalties outlined herein, any person violating any provision of this chapter may be found guilty of a Class 2 misdemeanor under G.S. 15A-1340.20 et seq. or any other applicable section for misdemeanor sentencing. For a continuing violation, each day's violation may be deemed to be a separate offense.

(B) *Equitable remedies.* This chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(C) *Civil penalties.*

(1) In addition to the other remedies for violation of this chapter, the Police Chief or any person authorized by him or her may issue to the known owner or person having custody or control of an animal, a ticket giving notice of the violation of this chapter. Any such official shall be authorized to secure the name and address of the owner or person in control of the animal in violation. Tickets so issued may be delivered in person or mailed by registered or certified mail to the person charged if the person cannot otherwise be readily located. Any such ticket issued shall impose upon the owner a civil penalty of \$50 for the second offense, and \$200 for the third and all subsequent offenses. These penalties must be paid within 20 days to the town. In the event the owner of the animal or other violator does not appear in response to the above-described ticket, or if the applicable penalty is not paid within the time prescribed, a criminal summons shall be issued against the violator or owner or person having custody of the animal in violation of this chapter, and upon conviction the violator or owner or person having custody of the animal shall be punished as the court prescribes hereunder.

(2) The Police chief shall cause all tickets to be serially numbered in duplicate and shall cause the records of the issuance and disposition of such tickets to be maintained so that an accounting can be made,

CHAPTER 82: LITTERING

Section

- 82.01 Littering prohibited
- 82.02 Littering from vehicles
- 82.03 Maintenance of public areas
- 82.04 Receptacles

82.01 LITTERING PROHIBITED.

It shall be unlawful for any person to throw or deposit on any street or sidewalk; or on any other public property; or in the Town Hall or on its grounds; or on any private property, except with written permission of the owner or occupant of the private property, any trash, refuse, garbage, building material, cans, bottles, broken glass, paper, or any type of litter.

Penalty, see # 10.99

82.02 LITTERING FROM VEHICLES.

It shall be unlawful for any person while a driver or a passenger in a vehicle to throw or deposit litter on any street or other public place within the town, or on private property.

Penalty, see # 10.99

82.03 MAINTENANCE OF PUBLIC AREAS.

Every owner, lessee, tenant, occupant, or other person in charge of any commercial establishment or premises which maintains any paved or unpaved areas for the use of the public, either for parking or as access areas and incident to the carrying on of the principal business of any commercial establishment or premises and which parking or access areas abut or lie within ten feet of any public street or other public way, shall keep and maintain the areas clean and free from trash, litter, rubbish, and any materials liable to be blown, deposited, or cast on the street or other public way.

82.04 RECEPTACLES.

Suitable receptacles may be provided in parking or access areas within the meaning of # 82.03 of this chapter. The receptacles shall be plainly marked and constructed to prevent scattering of any trash, litter, rubbish, or other materials deposited therein.

See Attachment as of 05-13-14.

#82.04 RECEPTACLES

All lids and doors of the receptacle must be closed at all times except when depositing trash or refuse into the receptacle.

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* See Attached amend. 5/13/14 formal wording

#82.04 RECAPTACLES

All lids and doors must be kept closed at all times except when depositing trash or refuse into the receptacle.

CHAPTER 83: WEEDS, GRASS AND REFUSE

Section

- 83.01 Nuisance conditions
- 83.02 Investigation
- 83.03 Notice of violation; hearing
- 83.04 Notice to abate
- 83.05 Abatement by town
- 83.06 Costs of abatement; lien
- 83.07 Procedure not exclusive

Statutory reference:

Abatement of public health nuisances, see G.S. 160A-193

83.01 NUISANCE CONDITIONS.

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

- (A) The uncontrolled growth of noxious weeds or grass to a height in excess of 8 inches 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 ice box, refrigerator, stove, glass, building material, building rubbish, or similar items.
 - (E) Any condition detrimental to the public health which violates the rules and regulations of the County Health Department.
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- (F) Trees and shrubbery obstructing streets, sidewalks and/or intersections. The growing and maintenance of trees with less than 14 feet clearance over streets or less than eight feet over sidewalks, or the growing and maintenance of trees, hedges, shrubbery, or the like in excess of three feet in height within the radius of 20 feet from the point where the curb line of any street intersects the curb line of another street shall be prohibited. No trees, hedges, shrubbery, or the like shall be

planted between the curb line and the property line of any street with a radius of 20 feet from the point where the curb line of any street intersects with the curb line of another street.

83.02 INVESTIGATION.

The Town Clerk, upon notice from any person of the possible existence of any of the conditions described in # 83.01, shall cause to be made by the appropriate County Health Department official, or town official, such investigation as may be necessary to determine whether conditions exist which may constitute a public nuisance as declared in # 83.01.

83.03 NOTICE OF VIOLATION; HEARING.

If it appears that such conditions exist, the Town Clerk shall cause to be delivered or mailed to the owner of the property upon which the conditions exist, a notice stating the reasons why the conditions may constitute a violation and that a hearing will be held before the Town Clerk at a place therein fixed, not less than 10 nor more than 30 days after the delivery or mailing of the notice. The owner or any party in interest shall have the right to file an answer to the notice and to appear in person, or otherwise, and give evidence at the place and time fixed in the notice. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in such hearings.

83.04 NOTICE TO ABATE.

If a determination is made that such conditions constituting a public nuisance exist, the Town Clerk shall notify, in writing, the owner of the premises in question of the conditions constituting such public nuisance and shall order the prompt abatement thereof within 15 days from the receipt of such written notice.

83.05 ABATEMENT BY TOWN.

If the owner, having been ordered to abate such a public nuisance, fails, neglects, or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the Town Clerk shall cause the condition to be removed or otherwise remedied by having employees of the town to go upon the premises and remove or otherwise abate the nuisance under the supervision of an officer or employee designated by the Town Clerk. Any person who has been ordered to abate a public nuisance may within the time allowed by this chapter, request the town in writing to remove such condition, the cost of which shall be paid by the person making the request.

83.06 COSTS OF ABATEMENT; LIEN.

(A) 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 it shall be the duty of the Town Clerk to mail a statement of such charges to the owner or other person in possession of the premises with instructions that such charges are due and payable within 30 days from the receipt thereof.

(B) In the event charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in # 83.04, 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 G.S. 160A-193.

83.07 PROCEDURE NOT EXCLUSIVE.

The procedure set forth in this chapter shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances and this chapter shall not prevent the town from proceeding in a criminal action against any person, firm, or corporation violating the provisions of this chapter as provided in G.S. 14-4.

CHAPTER 84: NOISE

Section

84.01 Loud and disturbing noises prohibited

84.02 Noises expressly prohibited

84.99 Penalty

Statutory reference:

Authority of town to regulate, restrict or prohibit loud noises, see G.S. # 160A-184

84.01 LOUD AND DISTURBING NOISES PROHIBITED.

It shall be unlawful for any person, firm, or corporation to make, create, assist in creating, permit, continue, or cause to be made or continued any unnecessary, excessive, unreasonable, or unusually loud noise or any noise which annoys, disturbs, frightens, injures or endangers citizens within the corporate limits of the town.

84.02 NOISES EXPRESSLY PROHIBITED.

The following acts, among others, are declared to be loud, unnecessary, and disturbing noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

(A) *Horns, signaling devices, etc.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unnecessary and unreasonable period of time, or the use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicles or equipment.

(B) *Radios, CD players, etc.* The using, operating, or playing, or permitting to be played, used or operated, of any television set, radio receiving set, musical instrument, CD player, or sound amplifying device or other machine or device for the producing or reproducing the sound in such a manner or with such volume as to annoy or disturb the peace, quiet, comfort or repose of the neighboring inhabitants or of any person in any dwelling, motel, hotel, or other type of residence. The operation of any such machine or device between the hours of 9:30 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located shall be prima facie evidence of a violation of this section except as provided in ~~Section 84.02-(N).~~

(C) *Loudspeakers, amplifiers, etc. used for advertising.* The using or operating or permitting to be played, used or operated, of any radio receiving set, musical instrument, CD player, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(D) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 9:30 p.m. and 7:00 a.m., or at any time or any place in such manner as to annoy or disturb the peace, quiet, comfort or repose of the neighboring inhabitants or of any persons in any office, or in any dwelling, motel, hotel or other type of residence, or of any persons in the vicinity.

(E) *Animals, birds, etc.* The keeping of any animal or bird which, by causing frequent or long continued noise, disturbs the comfort and repose of any person in the vicinity.

(F) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(G) *Loading or unloading or opening boxes, etc.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, crates and containers.

(H) *Noises near schools and churches.* The creation of any excessive noise on any street adjacent to any school, institution of learning, or church while the same is in use, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys; provided, that conspicuous signs are displayed indicating that the same are schools or churches.

(I) *Hawkers and peddlers.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(J) *Noises to attract attention.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, sale, or place of business.

~~(K) *Raucous parties.* Any party or assembly of persons in residential units or commercial establishments producing loud and raucous noise after 9:30 p.m. that tends to disturb the comfort, quiet, or repose of persons in residential units or on other residential premises. The person in possession of the premises where such a party or assembly of persons takes place shall be deemed responsible for the emission of loud and raucous noises under this division.~~

(L) *Construction noise.* Including but not limited to hammering, power saws, heavy equipment, delivery trucks, other construction vehicles or equipment associated with a construction site before 7:00 a.m. or after 8:00 p.m.

(M) *Firing or discharging of guns, crackers, etc.* The firing of guns, squibs, crackers, gunpowder, or other combustible substance in the streets or elsewhere for the purpose of making noise of disturbance.

(N) *Special Permit may be issued by the Town between the dates of January 1 and December 31.* This permit will only be for the hours between 9:30 – 11:00 p.m. on Friday and/or Saturday night. The permit will be limited to a maximum of two (2) days and limited to the business districts. Individual businesses or organizations will be allowed to secure no more than eight (8) permits for each business organization during the above specified dates. Cost of the permit will be \$200.00 per day.

84.99 PENALTY.

Where there is a violation of any provision of this chapter, the town, at its discretion, may take one or all of the following enforcement actions:

(A) A police officer may issue a citation subjecting the violator to a \$100 civil penalty to be recovered by the town. Citations must be paid within 72 hours by the violator after receipt of the citation. If the violator does not pay the penalty within 72 hours, the town shall provide for a \$25 delinquency charge and recover the penalty, and all subsequently accruing penalties, in a civil action.

(B) Any person, firm or corporation violating the provisions of this chapter shall be guilty of a class 3 misdemeanor and shall be fined not more than \$500.

(C) Notwithstanding divisions (A) and (B) above, this chapter may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.

CHAPTER 85: MISCELLANEOUS OFFENSES

Section

- 85.01 Attempt, aiding and abetting
- 85.02 Riots, routs and unlawful assemblies
- 85.03 Discharging weapons
- 85.04 Interfering with pipes, drains, wiring or the like
- 85.05 Tampering with property of another
- 85.06 Tampering with, trespassing on town property; payment for damages
- 85.07 Interfering with town officers and employees
- 85.08 Impersonating town officer or employee
- 85.09 Loitering
- 85.10 Yard Sales

85.01 ATTEMPT, AIDING AND ABETTING.

(A) It shall be unlawful for any person to attempt to commit any act which is prohibited by this code or other ordinance, or by any rule, regulation, order, or notice duly promulgated or given pursuant to authority thereof, and it shall be unlawful for any person to aid or abet the commission or attempted commission of any act which is prohibited by this code or other ordinance, or by any rule, regulation, order, or notice duly promulgated or given pursuant to authority thereof.

(B) It shall be unlawful for any person to attempt to avoid the doing of any act which is required by this code or other ordinance, or by any rule, regulation, order, or notice duly promulgated or given pursuant to authority thereof, and it shall be unlawful for any person to aid or abet the avoidance or attempted avoidance of an act which is required by this code or other ordinance, or by any rule, regulation, order, or notice duly promulgated or given pursuant to authority thereof.

85.02 RIOTS, ROUTS AND UNLAWFUL ASSEMBLIES.

Riots, routs, and unlawful assemblies shall be dispersed forthwith by the town police and other law enforcement officers, and all persons present at the scene of any riot, rout, or unlawful assembly shall, upon command of any law enforcement officer to disperse, forthwith obey such command, and peacefully disengage themselves from such riot, rout, or unlawful assembly and leave the scene thereof, and persons who fail to obey such command shall be subject to immediate arrest.

Statutory reference:

Riots and civil disorders, see G.S. # 14-288.1 et seq.

85.03 DISCHARGING WEAPONS.

(A) It shall be unlawful for any person to discharge or shoot any gun, pistol, match pistol, or explosive material upon any street, sidewalk, or lot within the town (except in defense of person or property) without permission first obtained from the Chief of Police in writing; and the Chief of Police shall have power to grant any permit under this section for one day only, and that only upon good reason shown therefore; provided that this section shall not apply to the operation of any shooting gallery, rifle range, skeet range, or other controlled type of shooting for which a license or permit to operate such controlled shooting has been first obtained from the Town Council.

(C) It shall be unlawful for any person to shoot or propel any missile from a slingshot or by means of a rubber gun upon any street, sidewalk, or lot within the town.

Statutory reference:

Explosives; authority to regulate, see G.S. # 160A-183

Firearms, authority to regulate, see G.S. # 160A-189

Pellet guns and other mechanisms;; authority to regulate, see G.S. # 160A-190

85.04 INTERFERING WITH PIPES, DRAINS, WIRING OR THE LIKE.

It shall be unlawful for any person to interfere in any way with any pipeline or drain, or any ditch connected with any pipeline or drain, or with any electric light pole or wiring, or any work being done by the town employees, or by contract for the town.

85.05 TAMPERING WITH PROPERTY OF ANOTHER.

(A) No person shall, knowingly and with proper authority, use, tamper with, render inoperative, destroy, damage, remove, deface, molest, or otherwise interfere with any personal property of another.

(B) No person shall, knowingly and without proper authority, destroy, damage, deface, molest, or otherwise interfere with any real property of another, or knowingly trespass upon the real property of another.

Penalty, see # 10.99

85.06 TAMPERING WITH, TRESPASSING ON TOWN PROPERTY; PAYMENT FOR DAMAGES.

(A) No person shall, without proper authority, knowingly use, tamper with, render inoperative, destroy, damage, remove, deface, molest, or otherwise interfere with any books, records, furniture, equipment, gear, apparatus, tools, or other items of personal property belonging to, leased to, or used by the town or any agency thereof.

(B) No person shall, without proper authority, knowingly trespass upon or damage, deface, molest or otherwise interfere with any real property belonging to, leased to or used by the town or any agency thereof.

(C) Any person who shall violate any provisions of divisions (A) and (B) above shall, in addition to any penalty which may be imposed for such violation, be required to pay for the damages inflicted by him.

Penalty, see # 10.99

85.07 INTERFERING WITH TOWN OFFICERS AND EMPLOYEES.

No person shall negligently or willfully interfere with, hinder, or obstruct any officer or employee of the town who is engaged in, en route to, or returning from the performance of official duty, whether such interference, hindrance, or obstruction be, by threat, assault, or otherwise.

Statutory reference:

Resisting or obstructing public officers, see G.S. # 14-223

85.08 IMPERSONATING TOWN OFFICER OR EMPLOYEE.

No person shall falsely represent himself to be an officer or employee of the town, or without proper authority wear or display any uniform, insignia, or credential which identifies any town officer or employee; nor shall any person without proper authority assume to act as an officer or employee of the town, whether to gain access to premises, obtain information, perpetrate a fraud, or for any other purpose; provided, that nothing in this section shall be construed to prevent a private citizen from making a lawful citizen's arrest for felony or breach of the peace committed in his presence.

85.09 LOITERING.

(A) It shall be unlawful for any person or persons to willfully loiter and linger on the premises, grounds (including adjacent, vacant lots), parking areas or public vehicular areas of any service station, supermarket, store, restaurant, office building or other business located in the Town of Newland, North Carolina, between the hours of 10:00 p.m. and 6:00 a.m.

Any person or persons willfully violating this ordinance, shall be guilty of a Class 3 misdemeanor and shall be subject to a fine of \$50.00.

(B) It shall be unlawful for any person or persons to willfully loiter and linger on any street, sidewalk, alley, right-of-way, or other property owned by the Town and located in the Town of Newland, between the hours of 10:00 p.m. and 6:00 a.m.

Any person or persons willfully violating this ordinance, shall be guilty of a Class 3 misdemeanor and shall be subject to a fine of \$50.00.

85.10 YARD SALES.

It shall be unlawful for any person or persons to hold yard sales on public property, streets, or alleyways. Yard sales shall only be permitted on private property, with owner's consent.

Any person or persons willfully violating this ordinance, shall be guilty of a Class 3 misdemeanor and shall be subject to a fine of \$50.00.

CHAPTER 80: ABANDONED AND JUNKED MOTOR VEHICLES

Section

- 80.01 Administration and enforcement of provisions
- 80.02 Abandoned vehicle prohibited; removal authorized
- 80.03 Nuisance vehicle prohibited; removal authorized
- 80.04 Regulations for junked motor vehicles; removal authorized
- 80.05 Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements
- 80.06 Exceptions to prior notice requirements
- 80.07 Removal of vehicles; post-towing notice requirements
- 80.08 Right to probable cause hearing before sale or final disposition of vehicle
- 80.09 Redemption of vehicle during proceedings
- 80.10 Sale and disposition of unclaimed vehicle
- 80.11 Conditions on removal of vehicles from private property
- 80.12 Unlawful removal of impounded vehicles
- 80.13 Exception to provisions
- 80.14 Protection against criminal or civil liability

80.01 ADMINISTRATION AND ENFORCEMENT OF PROVISIONS.

The Police chief and Town Administrator shall be responsible for the administration and enforcement of this chapter. The Police Chief shall be 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. The Town Administrator shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property. Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Police Department in enforcing other laws or in otherwise carrying out their duties.

80.02 ABANDONED VEHICLE PROHIBITED; REMOVAL AUTHORIZED.

(A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.

(B) Upon investigation, proper authorizing officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

80.03 NUISANCE VEHICLE PROHIBITED; REMOVAL AUTHORIZED.

(A) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.

(B) Upon investigation, the Town Administrator may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined above, and order the vehicle removed.

80.04 REGULATIONS FOR JUNKED MOTOR VEHICLES; REMOVAL AUTHORIZED.

(A) *Removal required.* 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 vehicle has been ordered removed.

(B) *Removal order.* Subject to the provisions of division (A) of this section, upon investigation, the Town Administrator may order the removal of a junked motor vehicle, as defined in this chapter, after finding in writing that the aesthetic benefits of removing the 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 the community, neighborhood or area appearance. The following, among other relevant factors may be considered:

1. Protection of property values;
2. Promotion of tourism and other economic development opportunities;
3. Indirect protection of public health and safety;
4. Preservation of the character and integrity of the community; and
5. Promotion of the comfort, happiness and emotional stability of area residents.

(C) *Permitted concealment or enclosure of junked motor vehicle.* Subject to the provisions of subsection (2) of this division, any junked motor vehicle must be kept in a garage or similar structure that provides a complete enclosure so that the junked motor vehicle(s) cannot be seen from a public street or abutting property. Garages or similar structures mean either a lawful, nonconforming use of a structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations. Notwithstanding subsection (1) of this division, one junked motor vehicle in its entirety can be located in the rear yard as defined by the town's land use ordinance if the junked motor vehicle is entirely concealed from public view by an approved motor vehicle cover. The motor vehicle cover must remain in good repair and must not be allowed to deteriorate.

80.05 REMOVAL OF ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS.

(A) Except as set forth in # 80.07 below, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing address of the registered owner or person entitled to the possession of the vehicle, or the

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(s) shall retain a written record to show the name(s) and addressees to which mailed, and the date mailed. If such names and addresses cannot be ascertained or if the 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 vehicle a notice indicating that the 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 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 vehicle is moved by the owner or legal possessor prior to that time.

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

80.06 EXCEPTIONS TO PRIOR NOTICE REQUIREMENTS.

(A) The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those 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.

(B) Circumstances justifying the removal of vehicles without prior notice include:

(1) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the Town Council hereby determines that immediate removal of such vehicles may be warranted when they are:

- (a) Obstructing traffic;
- (b) Parked in violation of an ordinance prohibiting or restricting parking;
- (c) Parked in a no-stopping or standing zone;
- (d) Parked in loading zones;
- (e) Parked in bus zones; or
- (f) Parked in violation of temporary parking restrictions imposed under code sections.

(2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance

vehicles left on city-owned property other than the streets and highways, and on private property, such 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 vehicles blocking or obstructing entrances or exits to businesses and residences; vehicles parked in such a location or manner as to pose a traffic hazard; and vehicles causing damage to public or private property.

80.07 REMOVAL OF VEHICLES: POST-TOWING NOTICE REQUIREMENTS.

(A) Any abandoned, nuisance or junked 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 vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

- (1) The description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

(B) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in division (A) (1) through (5) of this section, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his agent.

(C) If the vehicle is registered in this state, notice shall be given within 24 hours. If the vehicle is not registered in this state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

(D) Whenever an abandoned, nuisance or junked motor vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in division (A)(1) through (5) of this section.

80.08 RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the 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 Magistrate will set the hearing with 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. # 20-219.11, as amended.

80.09 REDEMPTION OF VEHICLE DURING PROCEEDINGS.

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

80.10 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the town and in accordance with G.S. ## 44-A-1 and 44A-6.

80.11 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.

As a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of such property could have the vehicle removed under applicable state law procedures. In no case will a 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 vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Zoning Administrator. The town may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage or sale thereof.

80.12 UNLAWFUL REMOVAL OF IMPOUNDED VEHICLES.

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

80.13 EXCEPTION TO PROVISIONS.

Nothing in this chapter shall apply to any vehicle which meets the following conditions:

(A) The vehicle is located in a bona fide automobile graveyard or junkyard as defined in G.S. # 136-143, in accordance with the *Junkyard Control Act*, G.S. # 136-141 et seq.

(B) The vehicle is an enclosed building.

(C) The vehicle is 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.

(D) The vehicle is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

80.14 PROTECTION AGAINST CRIMINAL OR CIVIL 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 or junked motor vehicle, for disposing of such vehicle as provided in this chapter.