

**ORDINANCE 23-225**

**AN ORDINANCE AMENDING THE REGULATION OF PUBLIC NUISANCES  
IN THE TOWN OF FAIRMONT**

**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 Board of Commissioners of the Town of Fairmont finds that it is in the public interest to amend the Public Nuisances Ordinance as it pertains to regulating Public Nuisance conditions in the Town; and

**WHEREAS**, the Board of Commissioners of the Town of Fairmont, after due notice, conducted a public hearing on the 21st day of March 2023 upon the question of amending this ordinance in this respect.

**THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF FAIRMONT, NORTH CAROLINA:**

**PART ONE.** That an Ordinance entitled “Chapter 91: Nuisances, Sections 91.01 through 91-08”, of the Code of Ordinances of the Town of Fairmont, North Carolina, is hereby amended in its entirety to read as follows:

**" CHAPTER 91: PUBLIC NUISANCES**

**91.01 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 and are found, deemed, and declared to be public nuisances wherever the conditions may exist and the creation, maintenance, or failure to abate any nuisances is hereby declared unlawful:

1. Any weeds or other vegetation having an overall height of more than eleven (11) 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 and producing vegetable plants. It shall be the duty of every person occupying, owning, or having control of property abutting on a street or highway that utilizes a portion of the unused street or highway right-of-way as a yard or any other use to maintain said right-of-way in the same character and manner as the abutting use.

2. Any accumulation of trash and/or garbage which is the result of the absence or of overflowing or improperly closed trash or garbage containers, that attracts or is likely to attract mice and rats, flies and mosquitoes or other pests.
3. An open or unsecured storage or collection place for chemicals, acids, oils, gasoline, flammable, or combustible materials or flammable or combustible liquids, poisonous materials or other similar harmful or dangerous substances, gasses, or vapors.
4. An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials or objects of a like nature;
5. Any accumulation of garbage, 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, mosquitoes, or vermin prejudicial to the public health.
6. 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.
7. The open storage of any discarded icebox, furniture refrigerator, stove, glass, building materials, building rubbish or similar items. The use of carports, open porches, decks, open garages and other outdoor areas that are visible from the street as a storage or collection place for boxes, appliances, furniture (not typical outdoor or yard furniture), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods or other similar condition that increase the likelihood of a fire; may conceal dangerous conditions; may be a breeding place or habitat for mice, rats or other pests; or, create an unattractive condition or visually blighted property.
8. 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 Board of Commissioners or their designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.
9. A collection place for lumber, bricks, blocks, old and broken concrete materials, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating and 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.
10. The placement, storage or use of upholstered sofas, couches, chairs or other indoor type furniture, appliances, seats removed from motor vehicles or other furniture not intended for outdoor use by the manufacturer, use on any open porch, carport, stoop, deck, veranda, terrace, patio, or other outdoor area that is visible from nearby streets and sidewalks.
11. A collection place, pool, or pond of stagnant or foul water or persistent dampness caused by overflowing septic tanks, manmade dams, open ditches, overflowing pipes, foundation trenches or other impoundments of any kind.

12. Barns or farm animal pens, pastures or enclosures for farm animals which are not kept sanitary and clean or otherwise become a collection place for animal waste and which because of the conditions associated therewith attract rats, mice, flies or other pests or emit foul odors that can be detected or noticed on adjacent properties or are otherwise not kept in a sanitary condition.
13. Dog lots, pens, pet enclosures of all kinds, outdoor areas where dogs or other pets are chained or kept or areas where dogs and cats are permitted to roam which become a collection place for dog, cat or pet waste and excrement and which attract flies or other pests, emit foul odors which can be detected or noticed on adjacent property or are not kept in a sanitary condition.
14. A collection place for sewage and sewage drainage or the seepage from septic tanks, broken or malfunctioning plumbing and sewer pipes or any other seepage of dangerous, hazardous, or poisonous liquids.
15. A collection place for tree limbs, dried brush, dead vegetation, stumps or other decayed wood and materials or other similar rubbish.
16. Any discharge into or polluting of any public well or cistern, stream, creek, river or other body of water or the discharge of any dangerous substance or any other material likely to harm the water or any vegetation, fish or wildlife in or along the water or the storage of such harmful materials and substances in a manner so that it is likely that such streams, creeks, rivers or other bodies of water will become polluted or adversely affected in any manner.
17. Any condition which blocks, hinders, or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water.
18. Any conditions or use of property, which results in the emission of pollutants and particles into the atmosphere or causes noxious odors, vapors, and stenches to be discharged into the air.
19. 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 eight (8) 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;
  - (i) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Board of Commissioners.

20. Any condition detrimental to the public health which violates the rules and regulations of the County Health Departments.

### **91.02 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 Board of Commissioners 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.

### **91.03 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.

#### **91.04 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.

#### **91.05 ABATEMENT PROCEDURE.**

If the owner of any property fails to comply with a notice given pursuant to this section, within ten (10) days after the service of 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 Board of Commissioners 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.

#### **91.06 ABATEMENT BY TOWN.**

1. If any person who has been ordered to abate a nuisance pursuant to this chapter, fails, neglects or refuses to abate or remove the condition constituting the nuisance within time allowed in the notice, the Town Manager shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor designated by the Town Manager go upon the premises and remove or otherwise abate the nuisance under the supervision of the enforcement official designated by the Town Manager.
2. Any person who has been ordered to abate a nuisance may within the time allowed by this chapter request the town in writing to remove the condition, the cost of which shall be paid by the person making the request.
3. The actual cost incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner of the lot or parcel of land and it shall be the duty of the tax collector or other appropriate town official to mail a statement of the charges to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from receipt of the statement.
4. If 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 subsection 3, the charges shall become a lien on the land or premises where the nuisance occurred and shall have the same priority and be collected as unpaid ad valorem taxes, as provided in G.S. § 160A-193(a).

5. If 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 subsection section 3, 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 subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another, as provided in G.S. § 160A-193(b).

#### **91.07 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 FIFTY DOLLARS (\$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 occurs, 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 failure of the violator to obey the Notice of Violation/Warning Citation, a Notice of 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 Notice of Violation/Warning Citation. The violator shall be deemed to have been served upon the mailing of said Notice of Civil Citation. The Notice of Civil Citation shall direct the violator to appear in person at the Town Hall to pay the penalty within (15) fifteen days of the date of the Civil Citation, or alternatively to pay the citation by mail. The violation for which the penalty is issued must have been corrected by the time the penalty is paid, otherwise further penalties shall accrue. Penalties accrue from the date initially imposed in the Notice of Civil Citation and will continue without further notice, for each day the offense continues, until the prohibited activity is corrected, ceased, or abated. The Town may institute a civil action in the North Carolina General Court of Justice for the collection of the penalty, attorney fees, interest, court costs, and other such relief as permitted by law.

**91.08 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.

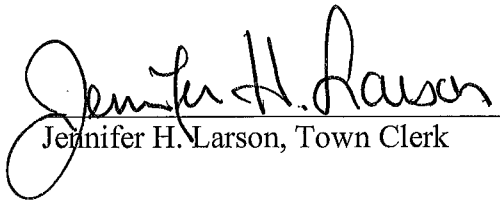
**PART FOUR.** The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

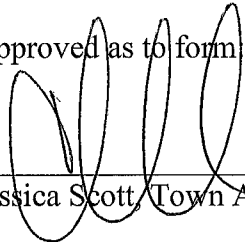
**PART FIVE.** This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 21st day of March 2023.

  
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Charles Kemp, Mayor

ATTEST:

  
\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

Approved as to form  
  
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Jessica Scott, Town Attorney

