

Chapter 10 ENVIRONMENT

ARTICLE I. PUBLIC NUISANCES¹

Sec. 10-1. Enforcement and jurisdiction.

- (a) The town manager or his or her designee (collectively the "town manager") is charged with the duty of full enforcement of this article and shall have the full power and authority imposed by this article and is hereby authorized and directed to proceed to carry out its provisions.
- (b) As provided in G.S. 160A-193, the town has the authority to summarily remove, abate, or remedy any public nuisance in the town limits, or within one mile thereof.

(Ord. of 11-4-2019(1), Att. B; Ord. of 12-2-2019)

Sec. 10-2. Definitions.

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

Building materials means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris. See G.S. 130A-290(a)(4).

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

Combustible refuse means refuse, capable of incineration or burning, such as garbage, paper, rags, boxes and wood.

Firewood means parts of trees cut into logs suitable for use in fireplaces or for use in wood-burning heaters which are not rotten or decayed.

Garbage solid waste means all putrescible wastes, including animal and vegetable matter, resulting directly from the handling, preparation, cooking or consumption of food by humans, including food wrappers and containers, and minimum amounts of liquid necessarily incident thereto but excluding sewage and human waste. Also referred to herein as "garbage." See Code of Ordinances section 16-1.

Harmful insects means mosquitoes, ticks, fleas and flies and other arthropods which can be living transporters and transmitters of a causative agent of a disease.

Heavily wooded lot means a lot so densely covered with trees and undergrowth that equipment cannot maneuver.

¹Editor's note(s)—Ord. of 11-4-2019(1), Att. B, repealed the former Art. I, §§ 10-1, 10-2 and enacted a new Art. I as set out herein. The former Art. I pertained to environment, in general, and derived from prior Code, ch. VII, § 4, and Ord. of 11-13-2006(1).

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

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

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

Nuisance means any condition that is dangerous or prejudicial to the public health or public safety.

Open place means a yard area, a vacant lot; a deck, landing, patio, porch or carport not totally enclosed by a roof, walls, screens or glass windows; or the parkway between the sidewalk and the street curb or pavement edge. The term does not include land zoned for agriculture.

Ornamental grasses means true grasses, including but not limited to, (*Gramineae*) including close relatives such as sedges (*Cyperaceae*), rushes (*Juncaceae*), hardy bamboos (particularly the genus *Phyllostachys*), and others.

Pest means any destructive or troublesome insect or small animal.

Rubbish means refuse (exclusive of garbage and ashes) including but not limited to paper, rags, cartons, boxes, wood, excelsior, tires, rubber, leather, tin cans, metals, mineral matter, glass, crockery and dust, except for dust incidental to excavated earth.

Stream means a natural or a modified natural water course with intermittent or perennial flow as evidenced by topographic alterations within the immediate watershed with the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

Weed means any undesired, uncultivated plant.

White goods means residential appliances not limited to washing machines, clothes dryers, stoves, ranges, ovens, refrigerators, freezers, dishwashers, and water heaters.

Yard solid waste means grass clippings, leaves, tree trimmings, shrubbery trimmings and other small quantities of rubbish normally coming from an occupied premises. Also referred to herein as "yard waste." See Code of Ordinances section 16-1.

Xeriscaping means landscaping in a style which requires little or no irrigation and often incorporates native plants.

(Ord. of 11-4-2019(1), Att. B; Ord. of 12-2-2019)

Sec. 10-3. Nuisances prohibited and enumeration.

Any of the following enumerated and described conditions occurring in an open place is hereby found, deemed and declared to constitute a detriment, danger and hazard to the health, safety, and general welfare of the inhabitants of the town and is found, deemed and declared to be public nuisances wherever the same may exist and the creation, maintenance, or failure to abate any nuisances is hereby declared unlawful. The natural conditions on lands dedicated to and accepted by the town as natural stream corridors, floodplain or open space, which dedications were established in order to preserve natural greenways, vegetative stream buffers, or natural connecting networks along floodways, streams and creeks, are deemed and declared as exceptions for the purpose of enforcement of this section.

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- (a) Any condition which creates or provides a breeding ground or harbor for rodents, harmful insects, or other pests.
 - (b) A place of dense growth of weeds, shrubs, or other similar vegetation, excluding ornamental grasses, over 12 inches in height. This limitation shall not prohibit xeriscaping, which is specifically allowed by this ordinance.
 - (c) A concentrated growth of vines, including but not limited to honeysuckle; kudzu; poison sumac (*Rhus vernix*); poison ivy (*Rhus radicans*); poison oak (*Rhus toxicodendron*); or other noxious vegetation that is:
 - (1) Encroaching upon any adjoining property with a dwelling or a commercial building; or
 - (2) Encroaching upon the sidewalk, or the curb or edge of the pavement of any abutting street; or
 - (3) A focal point for any other nuisance enumerated in this Code.
 - (d) A collection or ponding of stagnant water with conditions causing, or likely to cause, mosquitoes or other harmful insects to breed.
 - (e) Any concentration of combustible refuse.
 - (f) Any concentration of building materials or building rubbish which are not suitable for building construction, alteration or repair, or any concentration of building materials which becomes a focal point for any other nuisance enumerated in this article.
 - (g) Any concentration of collection of garbage, animal waste, yard waste or any rotten or putrescible matter of any kind which is not maintained for collection in accordance with Code of Ordinances chapter 16, "Solid Waste"; however, nothing in this subsection shall be construed to prevent the generally accepted use of a properly maintained compost pile sited in the side or rear yard area being used for fertilizer for lawns and gardens and for other agricultural or horticultural purposes, unless the compost pile becomes a focal point for any other nuisance enumerated in this article.
 - (h) Household or office furniture, any household fixtures, white goods or other appliances, metal products of any kind and similar items not designed to withstand the elements or for outdoor use. This subsection shall not prevent:
 - (1) The use of household furniture on a totally enclosed porch having a roof, walls, screens, or glass windows; or
 - (2) The use of furniture in good condition which is designed for outdoor use such as patio or lawn furniture, on porches or landings or in yard areas or other open places.
 - (i) Any junk or any concentration of litter.
 - (j) Flooding caused by improper or inadequate drainage from private property which interferes with the use of, or endangers in any way the streets, sidewalks, parks or other town owned property of any kind.
 - (k) Any condition including, but not limited to stumps, brush, junk, litter or other materials within or along the banks of such stream or drainage, which blocks or obstructs the natural flow of a stream, creek, or defined ditches or drains to the extent that impounded water is outside the banks of such stream or drainage.
 - (l) Any collection of stagnant water for which no adequate drainage is provided and which is, or is likely to become, a nuisance.
 - (m) Nuisance vehicle violation as defined by Code of Ordinances chapter 20, article 3, "Junked, Wrecked, and Abandoned Vehicles." The process for abating the nuisance vehicle shall be as provided for Code of Ordinances chapter 20, article 3.

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- (n) A concentration of firewood or logs when such concentration is a focal point for any other nuisance in this article.
 - (o) Any tree or tree limb or any concentration of branches which have fallen due to an act of nature or have been cut, except in a heavily wooded lot or other natural area unless such tree or tree limb or concentration of branches becomes a focal point for any other nuisance in this article.
 - (p) Any other condition specifically declared to be a danger to the public health, safety, and general welfare of inhabitants of the town and a public nuisance by the board of commissioners in accordance with G.S. 160A-193. After holding a public hearing on the matter, the board of commissioners may declare any other condition not listed in this article to be a public nuisance upon a finding that the condition is dangerous or prejudicial to the public health or public safety. The owner, occupant, and any other person having a legal interest in the property upon which the condition is located shall be given notice of the public hearing in the same manner as for alleged minimum housing violations in accordance with Code of Ordinances sections 6-84 and 6-88. The notice will describe the condition and its location; that the board of commissioners will be requested on a day certain, after a public hearing, to declare that the conditions existing constitute a danger to the public health or public safety of the inhabitants of the town and a public nuisance; and that after such declaration the condition shall be abated as provided for in this article.

(Ord. of 11-4-2019(1), Att. B; Ord. of 12-2-2019)

Sec. 10-4. Nuisance abatement procedures; civil penalties.

When any public nuisance is found to exist on any property, the following procedures shall be used:

- (a) When the town manager has a reasonable basis to believe a public nuisance exists on a property, he or she shall conduct an inspection of the property. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.
- (b) The town manager shall notify in writing the occupant and owner of the premises where the nuisance is located that:
 - (1) The conditions identified in the notice of violation exist which constitute a public nuisance;
 - (2) The Code provision(s) identified by Code section number that have been violated by the stated conditions on the property;
 - (3) The town may assess civil penalties; and
 - (4) Unless the public nuisance is abated within ten calendar days from the mailing of the notice, the town may initiate the procedures to abate the conditions constituting a nuisance;
- (c) The occupant and owner of the premises shall be given notice in the same manner as for alleged minimum housing violations in accordance with Code of Ordinances sections 6-84 and 6-88.
- (d) The cost of abatement, including an administrative fee of \$175.00, also including the cost, if any to reseed areas which were formerly a nuisance, shall constitute a lien against the premises as provided in G.S. 160A-193.
- (e) The town, to the extent required by law, shall make application for and obtain any permit or other approval required prior to undertaking the activities to abate the nuisance.
- (f) In lieu of or in addition to abatement, the public works director may levy civil penalties for public nuisances in the same manner as for zoning violations and in accordance with Code of Ordinances

section 26-357, except that appeals of a civil penalty levy shall be to the board of commissioners as set forth in subsection (g) below and not to the board of adjustment.

- (g) The town manager is hereby given full power and authority to enter upon the premises involved for the purpose of posting the property as a public nuisance and of abating the nuisance found to exist as herein set out. Within the ten-day period mentioned in subsection (b) above, the owner of the property where the nuisance exists may appeal the town manager's findings and/or the levy of civil penalties to the board of commissioners by giving a written notice of appeal to the town manager or the town clerk. In the event no appeal is taken, the town manager may proceed to abate the nuisance.
- (h) If an appeal is timely filed, the board of commissioners shall hold a public hearing on the matter as soon as reasonably possible, and in any event at its next regularly scheduled board meeting. The owner, occupant, and any other person having a legal interest in the property upon which the condition is located shall be given notice of the public hearing in the same manner as for alleged minimum housing violations in accordance with Code of Ordinances sections 6-84 and 6-88. After the public hearing, the board of commissioners may affirm, reverse, or modify the town manager's findings and order.

(Ord. of 11-4-2019(1), Att. B; Ord. of 12-2-2019)

Secs. 10-5—10-83. Reserved.

ARTICLE II. NOISE²

Sec. 10-84. Unlawful to create or assist in creating loud noise.

It shall be unlawful for any person, firm or corporation to create or assist in creating or permitting any unreasonably loud, disturbing, and unnecessary noise in the town; noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited.

(Prior Code, ch. X, art. A, § 7)

Sec. 10-85. Noise expressly prohibited.

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

- (1) The sounding of any horn or signal device on any vehicle unless used as a danger signal.
- (2) The use of any siren upon any vehicle, other than a police, fire, or other emergency vehicle.
- (3) The use of any radio to the extent that people within ten feet can hear the lyrics or the base vibrations of same.
- (4) The keeping of any animal or bird that causes frequent or long continued noise that shall disturb the peace of any person in the vicinity.

²Editor's note(s)—Ord. of 11-4-2019(1), Att. B, repealed the former art. II, §§ 10-23, 10-24 and replaced it with the former art. IV, §§ 10-84, 10-85, as set out herein. The former art. II pertained to administration, and derived from prior Code, ch. VII, §§ 1, 2.

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- (5) Any vehicle that is out of repair causing unnecessary noise or loud mufflers that create loud and unnecessary noise.
 - (6) The erection (including excavation), demolition, alteration or repair of any building in a residential or business district other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays and weekends, except in the case of an emergency.
 - (7) The shouting and/or crying out of any person which disturbs the quiet and peace of the residential or business districts.
 - (8) The use of any drum, loud speaker, or another instrument for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise. This subsection also applies to moving vehicles or any other device used for advertising.
 - (9) The firing or discharging of any firearm, firecracker, or other noisemaker in town for the purpose of making noise or creating a disturbance.

(Prior Code, ch. X, art. A, § 8)

Sec. 10-86. Reserved.

Editor's note(s)—Resolution of 12-2-2013, repealed § 10-86, which pertained to penalties and derived from Ord. of 11-13-2006(05).

Secs. 10-87—10-115. Reserved.

ARTICLE III. TREES³

DIVISION 1. GENERALLY

Sec. 10-116. Purpose.

- (a) The purpose of this article is to regulate the planting, maintenance, and removal of trees on municipally owned public property and rights-of-way within the town and on municipally owned property wherever located. In order to protect and conserve trees on public property and rights-of-way, this ordinance provides for the pruning, treatment and removal of trees and shrubs as is deemed necessary by the board of commissioners or a person acting under the authority of the board of commissioners. This article is also intended to provide for the trimming and removal of trees on public land when they obscure street lights, interfere with utility lines, or constitute a hazard to pedestrian or vehicular traffic, or otherwise endanger the public health, safety or welfare.
- (b) Another purpose of this article is to encourage the protection of trees and express the town's intent to use trees to create a more natural and amenable human environment. This article is not intended to be punitive nor to cause hardship to any person who uses the utmost care and diligence to protect trees within the town or on town property.

³Editor's note(s)—Ord. of 11-4-2019(1), Att. B, repealed the former art. III, §§ 10-52—10-55, and replaced it with the former art. V, §§ 10-116—10-204, as set out herein. The former art. III pertained to private property, and derived from prior Code, ch. VII, §§ 3, 5, 7; ch. X, art. A, § 14; Res. of 9-8-2008(01); Res. of 8-6-2012, § 2; Ord. of 6-6-2016(1).

Sec. 10-117. Definitions.

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

Park trees means trees, shrubs, and bushes in public parks having individual names, and all areas owned by the town, or to which the public has free access as a park.

Street trees means trees, shrubs, and bushes on land lying within rights-of-way on either side of all streets, avenues, or ways within the town.

Secs. 10-118—10-147. Reserved.

DIVISION 2. TREE BOARD

Sec. 10-148. Creation and establishment.

There is hereby created and established a town tree board for the town, which shall consist of five members, citizens, and residents of the town, who shall be appointed by the mayor with the approval of the board of commissioners. (Note—Ex officio members may be appointed as necessary; town manager, town engineer, etc.)

Sec. 10-149. Term of office.

The term of the five persons to be appointed by the mayor shall be three years except that the terms of two of the members appointed to the first board shall be for only one year and the terms of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.

Sec. 10-150. Compensation.

Members of the board shall serve without compensation.

Sec. 10-151. Duties and responsibilities.

- (a) It shall be the responsibility of the tree board to study, investigate, council and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planning, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the board of commissioners and upon its acceptance and approval shall constitute the official comprehensive town tree plan for the town.
- (b) The tree board, when requested by the board of commissioners, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.
- (c) The tree board shall furthermore serve as an advisory board to the board of commissioners with the following duties and responsibilities:
 - (1) To facilitate the planting, growth and protection of trees within the town;
 - (2) To foster the communication among the citizens of the town that would provide the needed protection of trees and to coordinate active measures to support the health and growth of trees within the town;

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- (3) To conduct a tree survey of existing trees along streets and on public property within the town;
 - (4) To investigate available grants, loans, or contributions from other governmental agencies, public or private corporations, or individuals and to recommend the expenditure of any proceeds toward the accomplishment of the board's purpose;
 - (5) To conduct continuing research, planning, and feasibility studies required to support the purpose stated herein.
- (d) The tree board shall also be responsible for developing an official street tree species list comprised of three groups of trees: small trees, medium trees, and large trees. No trees other than those included in the list may be planted as street trees without permission of the town tree board.
 - (e) The tree board will be responsible for establishing guidelines for the spacing of town trees in accordance with the three species size classes in the official street tree species list. These guidelines will cover spacing between street trees, the distance street trees may be planted from curbs and sidewalks, the distance street trees may be planted from any street corner, the location of street trees relative to overhead and underground water lines, sewer lines, transmission lines, or other utility, and any other areas involving the spacing of street trees, park trees, or town-owned trees.
 - (f) The tree board shall submit an annual report of its activities and recommendations to the board of commissioners and shall submit copies of its minutes and proceedings of its regular and special meetings.

Sec. 10-152. Operation.

The tree board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, which record shall be a public record. The tree board shall set a regular schedule for meetings and the chairperson may call a special meeting upon request of a majority of members of the board. A majority of the members shall be a quorum for the transaction of business.

Sec. 10-153. Interference with the town tree board.

It shall be unlawful for any person to prevent, delay or interfere with the town tree board, or any of its agents, while engaging in and about the planting, cultivation, mulching, pruning, spraying, or removing of any street trees, park trees, or trees on public grounds, as authorized in this article.

Sec. 10-154. Review by board of commissioners.

The board of commissioners shall have the right to review the conduct, acts and decisions of the town tree board. Any person may appeal from any ruling or order of the town tree board to the board of commissioners who may hear the matter and make the final decision.

Secs. 10-155—10-176. Reserved.

DIVISION 3. PERMITS AND LICENSES

Sec. 10-177. Permits required.

It shall be unlawful for any person or firm to prune, treat, or remove any street tree or park tree within the town without first filing an application and procuring a permit from the town manager or his designee. The town maintains the right to review the application and the tree(s) in question in determining whether or not to issue a permit.

Sec. 10-178. License and bond.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the town without first applying for and procuring a privilege. The license fee shall be consistent with the town's fee schedule filed with the town clerk. No license shall be required of any town employee doing such work as assigned by his supervisor.

Secs. 10-179—10-201. Reserved.

DIVISION 4. CARE AND PRESERVATION

Sec. 10-202. Public tree care.

- (a) The town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- (b) The town tree board may remove or cause or order to be removed, any publicly owned tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electrical power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said trees is in accordance with the guidelines for planting and spacing developed by the tree board. (Note—The tree board may reserve the right to approve any plantings that take place in right-of-way areas.)

Sec. 10-203. Tree topping.

- (a) It shall be unlawful as normal practice except as described below for any person, firm, or town department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.
- (b) Trees severely damaged by storms or other causes, or certain trees that interfere with or are an eminent threat to utility wires or other obstructions where other pruning practices are impractical may be exempted from this article at the determination of the town tree board.

Sec. 10-204. Removal of stumps

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.