

ORDINANCE NO. 2019-02
AN ORDINANCE AMENDING THE TOWN OF MILLS RIVER CODE OF
ORDINANCES

CHAPTER 152 - NUISANCES

This ordinance is enacted by the Town Council of Mills River, North Carolina pursuant to Chapter 160A of the North Carolina General Statutes. Town Council does hereby ordain and enact into law the following amendments to the Code of Ordinances for the Town of Mills River:

§ 152.01. PURPOSE AND OBJECTIVES.

(A) **Purpose.** This Chapter is enacted to protect the health, safety, and general welfare of the people of the Town of Mills River pursuant to powers granted under N.C.G.S. 160A-175, N.C.G.S. 160A-193, N.C.G.S. 160A-303, N.C.G.S. 160A-303.1, N.C.G.S. 160A-303.2; the Mills River Town Code; subsequent recodifications and/or amendments; and other applicable ordinances as may be adopted in the future.

(B) **Objectives.** The principal objectives of this Chapter are:

- (1) To prevent injury and illness to occupants of property and the public and to remove public nuisances.
- (2) To provide town wide standards for the abatement of public nuisances, including but not limited to solid waste, junked motor vehicles and abandoned manufactured homes.
- (3) To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public nuisances.
- (4) To ensure proper actions may be taken to abate public nuisances.

§ 152.02. JURISDICTION AND EXCEPTION.

(A) **Jurisdiction.** This Chapter shall apply to all the land within the corporate limits of the Town of Mills River.

(B) **Exception.** This Chapter shall not regulate property being actively used as a bona fide farm which is any tract of land used for dairying, the raising of agricultural products, forest products, livestock or poultry, or any other use defined as "Agriculture" in section §154.007 of the Town Code and including facilities for the sale of such products from the premises where produced.

§ 152.03. DEFINITIONS.

The following terms are defined for purposes of this Chapter:

(A) **Abatement** - The proper removal, repair, and/or containment of substances or materials hazardous to humans and/or the environment. Abatement is part of remediation.

(B) **Abandoned Manufactured Home** - A manufactured home that has not had legal power or was not properly connected to a permitted septic/sewer system and water supply in the most recent 6 months, not to be interpreted to include a manufactured home stored or parked in accordance with a valid zoning permit.

(C) **Building** - Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels. Two buildings connected by a common roof shall be considered as 1 building, provided that the width of the connecting roof shall be at least 20% of the principal building width, but in no case less than 6 feet in width. The connection of 2 buildings by means of an open porch, breeze way or passageway without a roof, or with a roof less than 6 feet in width, shall not be deemed to make them 1 building.

(D) **Junk** - Any discarded, abandoned, or scrapped copper, brass, metal, rope, rags, batteries, appliances, paper or rubber; discarded, dismantled, abandoned, or wrecked automobiles or other vehicles or parts thereof; dismantled or abandoned mobile/manufactured homes or RV's or travel trailers or parts thereof; discarded, dismantled or wrecked motorized or non-motorized equipment or parts thereof; discarded or scrapped iron, steel or other scrapped ferrous material; or any other materials, items or equipment similar to those listed herein.

(E) **Junked Motor Vehicle** - A motor vehicle that does not display a current license plate or vehicle registration and is partially dismantled or wrecked, cannot be self-propelled or moved in the manner it was originally intended to move, or is more than five years old and appears to be worth less than \$500 as provided by the municipality, or a junked motor vehicle as defined in N.C.G.S. 160A-303.2.

(F) **Manufactured Home** - A single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976), as amended. For purposes of this chapter, however, the term also includes mobile homes.

(G) **Occupant** - Any person who occupies real property, whether with or without any right, title or interest in the property, and any person in possession or charge of such property, in the event the owner resides or is located elsewhere.

(H) **Owner** - Any person, persons, organization, or corporation that owns, in whole or in part, the land, structure, or other property or is the purchaser of the property under contract for deed.

(I) **Personal Property** - All property other than that defined in the definitions of "property" and "real property, real estate and land" of this section that is subject to ownership.

(J) **Planning/Zoning Department** - The Town department responsible for enforcing this chapter.

(K) **Property** - Publicly or privately owned real property including parcels of land, buildings, or structures.

(L) **Property Agent** - A person authorized by a property owner to act in transacting business matters or in managing the affairs of the subject property.

(M) **Public Nuisance** - Any activity or use of Property or Personal Property or failure to act that adversely affects the public and shall include, but is not limited to, any condition

which poses an immediate and direct hazard to human health if left unheeded due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals, or other means of transmission or infections.

(N) **Recreational Vehicle** - A vehicular type unit primarily designed as temporary and mobile living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on and drawn by another vehicle. The units do not satisfy the dimensional requirements of a manufactured home.

(O) **Remediation** – The action of stopping or reversing conditions, uses, substances or materials hazardous to humans and/or the environment or otherwise creating a nuisance.

(P) **Vehicle Restoration Permit** - A permit that allows persons to actively restore an unlicensed and unregistered vehicle.

§ 152.04. PROHIBITIONS.

The creation or maintenance of a public nuisance is prohibited. Without limiting the generality of the foregoing, the following are hereby expressly declared to be public nuisances:

(A) Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.

(B) An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.

(C) Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent proof container designed or reasonably adapted for such purpose.

(D) Accumulation of carcass(es) of animals, birds, or fish by failing to bury, store, or otherwise dispose of in a sanitary manner within 24 hours after death.

(E) Significant outdoor storage of solid waste including but not limited to: decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, furnaces, home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all-terrain vehicles, toys, bicycles, junk or any other substances in which flies, mosquitoes, other disease-carrying insects, rodents or other vermin can harbor.

(F) Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.

(G) Any junked motor vehicles without a current vehicle restoration permit and/or any abandoned manufactured home as defined.

(H) Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.

(I) Breeding grounds which support mosquito larvae and mosquitoes capable of carrying diseases, or any other disease-causing microorganism.

(J) Use of a recreational vehicle as a primary residence without permitted electric, water, and sewerage connections.

(K) Recreational vehicles used to store solid waste.

§ 152.05. OUTDOOR STORAGE.

Outdoor storage by commercial and industrial uses shall be limited to items that are designed and intended for permanent outdoor usage, storage, and/or sale. Outdoor storage areas in business and industrial zones shall conform to a minimum ½ the minimum front building setback and not block or obstruct parking spaces or any line of sight for a public road.

§ 152.06. ADMINISTRATION AND ENFORCEMENT.

Where there is a violation of any provision of this Chapter, the Town, in its discretion, may require any appropriate action as described in this Chapter.

(A) **Town Ordinances.** Except where otherwise specified, this Chapter is subject to all provisions of the Mills River Town Code. The Town Manager or his/her designee (Department) shall be responsible for administration and enforcement of this Chapter.

(B) **Declaration as a public nuisance.**

(1) It shall be the duty of the Planning/Zoning Department acting by and through its authorized delegate to determine whether or not a public nuisance exists. The Department shall act by and through complaints only.

(2) For purposes of emergency response and notification to applicable authorities and posting for the public, the Planning/Zoning Department may determine that a structure, property, or portion of a property constitutes an immediate environmental health nuisance pursuant to Chapter 130A and the North Carolina General Statutes and North Carolina Administrative Code. In the event the Department makes this determination the nuisance will be referred to the Henderson County Department of Public Health for administration and abatement.

(C) **Modifications to or dismissal of the public nuisance declaration.**

(1) The Planning/Zoning Department may modify conditions of the declaration or dismiss the declaration of a public nuisance.

(2) Such modifications or dismissal shall occur only after the Planning/Zoning Department has confirmed that the violation no longer exists or if there has been substantial and continuing improvement towards abating the nuisance.

(3) The Planning/Zoning Department will base its criteria for determining levels of nuisance on the best health and safety information available at the time of the declaration and cannot be held liable for future discoveries.

(4) For good cause shown, the owner or occupant may request authorization from the Planning/Zoning Department for an extension of time to complete abatement activities. An extension may be granted if the extension does not increase the risk to public or safety and is deemed appropriate. Extensions may not be granted unless the owner or occupant shows substantial improvement toward abating the nuisance

and shall be for a period of be no longer than 30 days. Additional extensions shall be at the discretion of the Planning/Zoning Department and shall only be considered if there has been substantial and continuing improvement towards abating the nuisance.

(D) **Access to premises and records.** The owner or occupant shall, upon the request of the Town and after proper identification, permit access to all parts of the site or structure where a nuisance has been declared as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this Chapter. If the occupant will not permit entry upon the property, the Planning/Zoning Department shall complete the requirements of an administrative search warrant in order to inspect the complaint.

(E) **Interference.** No person shall in any way interfere with or hinder the Planning/Zoning Department in the performance of duties, or refuse access to gather information necessary to ascertain compliance with this Chapter.

§ 152.07. INVESTIGATION AND RESPONSE TO PUBLIC NUISANCE.

(A) **Owner notification.** Upon declaration of a public nuisance, the Planning/Zoning Department shall give written notice of its determination and orders to abate the nuisance to the owner, occupant and property agent, if applicable. A recipient of any such notice must take all action required within the time period stated in the notice. This notice shall be served in person, by regular mail, or by an officer authorized to serve a warrant and contain the following:

- (1) Property location by street address, parcel identification number, or other property description.
- (2) Information identifying the nature of the public nuisance at the property.
- (3) A summary of the owner's and occupant's responsibilities under this chapter.
- (4) Specific orders for abatement or remediation of the public nuisance.
- (5) A date for completion of the abatement not to exceed 30 days following the receipt of the notice unless a shorter time is required due to the Planning/Zoning Department's further determination that the immediate abatement is necessary to protect public and safety. In such cases, the reason for a shortened abatement period shall be specified.
- (6) Information regarding a right of appeal as provided in §152-10 of this Chapter and that, unless the threat to public is abated or removed in accordance with the terms of the notice, the Planning/Zoning Department will have the public nuisance abated or removed at the expense of the owner under the provisions of this Chapter and/or other applicable state or local law.

(B) **Unknown or absent property owner.** In the event the owner of the property is unknown or absent and has no known representative upon whom the notice can be served, the Planning/Zoning Department shall post a written or printed notice on the property stating that, unless the threat to the public is abated or removed within 30 days of the date of posting, the Planning/Zoning Department will have the public nuisance abated or

removed at the expense of the owner under the provisions of this Chapter and/or other applicable state or local law.

(C) **Public notification.** The Planning/Zoning Department shall provide information in writing about the public nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

- (1) Child Protective Services Division of the Henderson County Department of Social Services in situations of potential child maltreatment or endangerment.
- (2) Adult Protective Services Division of the Henderson County Department of Social Services in situations of potential vulnerable adult maltreatment or endangerment.
- (3) Neighbors in close proximity likely to be affected by the conditions found at the site.
- (4) Local law enforcement officers.
- (5) Henderson County Environmental (Public) Health.
- (6) Other state and local authorities that may have public or environmental protection responsibilities.

(D) **Warning sign.** The Planning/Zoning Department shall post a warning sign when deemed necessary to further protect the public and safety. The warning sign shall be posted on the entrance(s) of the structure or property and contain information sufficient to alert visitors or returning occupants to the site that it may be dangerous to enter, that entry is prohibited unless authorized by the Planning/Zoning Department or law enforcement department posting the sign. Any person other than the Planning/Zoning Department or designated agent that removes a warning sign shall be in violation of this Chapter.

(E) **Abating public nuisance.** If the owner, property agent or occupant fails or neglects to comply with the requirements in the notice provided under subsection A of this section, then the Planning/Zoning Department shall abate or remediate the public nuisance described in the notice. The Town will recoup such costs as necessary to abate the public nuisance as provided in §152-09 of this Chapter.

(F) **Vacating the public nuisance order.** Upon verification and acceptable proof of proper abatement, remediation, repair, or removal at the site, the Planning/Zoning Department shall issue written notice to those persons served notice under subsection A of this section that the public nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under subsection C of this section.

§ 152.08. VEHICLE RESTORATION PERMIT.

(A) Persons storing any motor vehicle for more than 30 days outside a fully enclosed permanent structure for the purpose of restoration shall obtain a Vehicle Restoration Permit from the Planning/Zoning Department. The permit shall be placed in the vehicle in a location viewable from outside the vehicle.

(B) This permit shall allow for 1 restoration vehicle and up to 1 parts vehicle that must be compatible with the vehicle being restored.

(C) The permit allows for outdoor storage of the vehicle(s) for a period of up to 6 months.

(D) A maximum of 2 six-month extensions may be granted upon request, provided substantial progress can be proven in the restoration of the vehicle at each extension interval. Progress will be measured by receipts for the purchase of parts or services or visible reconstruction or deconstruction.

(F) At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil or becoming a harborage for vermin.

(G) If restoration work is not complete upon the permit expiration date, the vehicle shall be removed or placed inside a fully enclosed building as required by this chapter.

§ 152.09. VIOLATIONS, PENALTIES, COSTS, AND REIMBURSEMENTS.

(A) **Civil Penalties.** Any person who is an owner or occupant of property and who violates this Chapter, or permits a nuisance to exist on the property under his/her control, or fails to take action to abate the existence of the violation(s) within the time specified in the notice described in 152-07 above, when ordered or notified to do so by the Planning/Zoning Department, shall be subject to a civil penalty of \$50.00. Each day's violation shall be treated as a separate offense.

(B) **Civil Action.** In the event of a violation of this ordinance or any order entered for abatement of a nuisance, the Town may take appropriate action to enforce this Chapter, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations. The Town may recover all costs and expenditures expensed towards remedying the violation, including administrative time and attorneys' fees.

(C) **Criminal Violation.** A violation of this ordinance is a Class 3 misdemeanor pursuant to N.C.G.S. 14-4.

(D) If required to remove, abate or remediate a public nuisance, the Town shall make every reasonable effort to recover costs incurred in removal, abatement or remediation in a civil action. The cost of enforcement action under this Chapter may be assessed and charged against the real property on which the public nuisance was located. The Town shall extend the cost as assessed and charged against said real property. Nothing herein precludes or limits the Town from seeking recovery of costs through other methods allowed by federal or state law.

(E) **Subrogation rights.** Nothing in this Chapter is intended to limit the subrogation rights of any party and the owner occupants. The Town shall maintain the right to recover costs, referenced in this section, from persons contributing to the damage.

§ 152.998. APPEALS.

(A) **Right of appeal.** When a public nuisance is declared, an owner of the affected property may appeal the declaration, including an order for abatement or remediation, by filing a written request with the Mills River Zoning Board of Adjustment.

(B) **Hearing.** If any owner makes a written request to the Zoning Board of Adjustment for hearing, such hearing shall be held in accordance to procedures as described in Sections 154.175 through 154.179 of the Town Code.

- (1) **Schedule.** The hearing shall be held at the next available meeting that satisfies public notice requirements after the request for a hearing was received.
- (2) **Witnesses and evidence.** All parties shall have full opportunity to respond to and present evidence and witnesses.
- (3) **Standard of proof.** The appellant shall have the burden of proving its position by clear and convincing evidence.
- (4) **Rules of evidence.** Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial, and repetitious evidence shall be excluded.
- (C) **Record of hearing.** The hearing shall be recorded, and the minutes of the meeting shall be approved by the Zoning Board of Adjustment at their next scheduled meeting.
- (D) **Notice of decision.** The decision of the Zoning Board of Adjustment shall be issued in writing within 10 calendar days following the hearing. Unless otherwise provided by law, the decision of the Zoning Board of Adjustment shall constitute the final decision.
- (E) **Further appellate rights.** Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than 30 calendar days after notice of the final decision has been issued from the Zoning Board of Adjustment.

ADOPTED AND PASSED by the Town Council of the Town of Mills River, North Carolina, effective on the 12th day of **OCTOBER**, 2019 at 12:01am

Chae T. Davis, Mayor

ATTEST:

Sue L. Powell, MMC, NCCMC
Town Clerk