

TITLE 8

Health and Safety

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CHAPTER 8.04

Nuisances

8.04.010 Applicability to undefined nuisances.

In all cases where no provision is made defining what are nuisances and how the same may be removed, abated or prevented, in addition to what may be declared such in this Chapter, those offenses which are known to the common law of the land and statutes of the State as nuisances may, in case the same exist within the Town, be treated as such and proceeded against as provided in this Chapter, or in accordance with any other provision of law. (Ord. 280 §2, 1979)

8.04.020 Public nuisance defined.

A *public nuisance* or *nuisance* is a substance, act, failure to act, occupation, activity, condition or use of property which is of such nature or continues for such length of time as to:

- (1) Annoy, injure or endanger the comfort, health, repose or safety of persons;
- (2) Render the public insecure in life or in the use of property; or
- (3) Interfere with, obstruct or tend to obstruct or render dangerous for passage any public park, street, alley, highway or other public way. (Ord. 280 §1, 1979; Ord. 2 §1, 2003; Ord. 08 §1, 2006)

8.04.030 Additional definitions.

As used in this Chapter, the following terms have the following meanings:

Abandon means to leave a thing with the intention not to retain possession of or assert ownership over it. The intent need not coincide with the act of leaving.

Antique vehicle means any vehicle valued principally because of its early date of manufacture or historic character or design, and which, if not operable, is substantially intact. A junked vehicle shall not qualify as an antique vehicle.

Excavation is construed in its ordinary, usual, customary and accepted sense and includes, but is not limited to, mine shafts and deposits of rock or soil resulting from such excavation.

Garbage includes kitchen and table refuse, offal, any decaying vegetable matter and all substances which attend the cooking, dealing in, processing or storage of meats, fowl, fruits or vegetables. As used in this Chapter, *waste* includes all refuse from places of human or animal habitation, industry or business. Properly maintained compost pits maintained at ground level are excepted, as are compost pits maintained above ground level, provided that the above ground level pits are framed on four (4) sides.

Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed.

Inoperable vehicle means any automobile, truck, tractor, motorcycle or self-propelled vehicle which is in a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed. The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- a. Absence of an effective registration plate upon such vehicle.
- b. Placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports.
- c. Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

Junk means discarded, inoperable or damaged household appliances, furniture or furnishings, waste or scrape material.

Junked vehicle means any vehicle that is in a state of disrepair or disassembly, is inoperable or exhibits signs of physical deterioration including rust or the loss of exterior paint or parts, or is damaged to the extent that it has value only for parts or salvage.

Rubbish means and includes all waste and litter, whether putrescible or nonputrescible, combustible or noncombustible, and includes but is not limited to, ashes, cans, paper, wrappings, cigarettes, cardboard, yard clippings, leaves, branches, wood, waste building materials, glass, grass clippings, bedding, crockery, abandoned or unsafe household furnishings, carcasses of dead animals, commercial fixtures, construction materials and other like material.

Vehicle means any automobile, truck, tractor or motorcycle which, as originally built, contained an engine, regardless of whether it contains an engine at any other time.

Weed, noxious, as used in this Chapter, means and includes those plants and vegetation designated as a "state noxious weed" by the Commissioner of Agriculture under the Colorado Noxious Weed Act, and/or as defined elsewhere in this Chapter by the Board of Selectmen. *Noxious weed* does not include flower gardens, cultivated or tended shrubbery lawfully used for hedge or screening purposes, vegetable gardens, growing crops, hay or grass grown for feed, fodder or forage in areas properly zoned for the same. (Ord. 280 §13, 1979; Ord. 2 §1, 2003)

8.04.040 Nuisance prohibited.

(a) It is unlawful for any person to own, occupy or have under his or her control any property, building, lot or premises with any nuisance located thereon. It is unlawful and an offense for any person to:

- (1) Do any act constituting a nuisance;
- (2) Knowingly fail to act where such failure causes or continues a nuisance;
- (3) Permit any activity or condition constituting a nuisance; or
- (4) Aid or abet in the creation or maintenance of a nuisance.

(b) An owner of real property upon which a nuisance exists shall be liable for a nuisance committed on the real property by a tenant in lawful possession if the Town notifies the owner and tenants of the nuisance as provided for in Section 8.04.120 of this Chapter before a fine or other liability is imposed. In the event a nuisance must be abated by the Town, no provision of this Section should be construed to relieve any property owner from any of the provisions contained in Section 8.04.130. (Ord. 280 §4, 1979; Ord. 08 §2, 2006)

8.04.050 Filing of complaint.

Complaints of nuisances may be made to the Town Administrator. All complaints shall state the nature of such nuisance, the location, including street address, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant. Complaints may be filed upon a form furnished by the Town, or otherwise provided in writing. (Ord. 280 §5, 1979; Ord. 2 §1, 2003)

8.04.060 Right of entry generally.

(a) Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Town Administrator, Building Official, Fire Chief, Marshal and/or the authorized representative of any of them has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, he or she may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on any of them; provided that if such building or premises is occupied, such person shall first present proper credentials and demand entry; and if such building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner and/or occupant or other person having charge or control of the building or premises and, upon locating the owner, occupant or other person, shall present proper credentials and demand entry.

(b) If entry is refused, such person shall give the owner and/or occupant, or if the owner and/or occupant cannot be located after a reasonable effort, he or she shall leave at the building or premises, a twenty-four-hour written notice of intent to inspect. The notice given to the owner and/or occupant or left on the premises as aforesaid shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant.

(c) After expiration of the twenty-four-hour period from the giving or leaving of such notice, the Town official seeking inspection may appear before any Municipal Judge and, upon a showing of probable cause, obtain a search warrant entitling him or her to enter the building or upon the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of an unoccupied building or premises, the person may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry therein.

(d) For the purposes of this Subsection, a determination of *probable cause* will be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises in issue in order to obtain a search warrant. The search warrant shall be served by the Marshal or his or her deputy. It is unlawful for any owner and/or occupant of the building or premises to resist reasonable force used by the authorized Town official acting pursuant to this Subsection. (Ord. 280 §6(1), 1979)

8.04.070 Right of entry in emergencies.

(a) Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Chapter, the Town Administrator, Building Official, Fire Chief or Marshal, upon a presentation of proper credentials or identification in the case of an occupied building or premises, or possession of the credentials in the case of an unoccupied building or premises, may enter into any building or upon any premises within the jurisdiction of the Town. In an emergency situation such person or his or her authorized representative may use such reasonable force as may be necessary to gain entry into the building or upon the premises.

(b) For the purposes of this Section, an *emergency situation* includes, but is not limited to, any situation where there is imminent danger of loss of life, limb and/or property. It is unlawful for any owner and/or occupant of the building or premises to resist reasonable force as may be necessary to gain entry into the building or upon the premises. (Ord. 280 §6(2), 1979)

8.04.080 Search warrant issuance.

Any Municipal Judge shall have the power to issue search warrants upon a showing of probable cause for the implementation of inspections as provided for in Section 8.04.060. (Ord. 280 §6(3), 1979)

8.04.120 Abatement procedure.

(a) Purpose. The purpose of this Section is to provide for a procedure by which the Town can enforce the various environmental concerns addressed by this Chapter, and to establish a policy authorizing the Town to take corrective enforcement measures should any landowner, tenant or occupant of any property located within the Town fail to voluntarily comply with any provision of this Chapter. Abatement of any nuisance as set forth in this Section shall be optional at the sole discretion of the Town, and shall not prevent the Town from availing itself of any other enforcement or criminal action, including the issuance of a summons to appear in Municipal Court.

(b) Abatement procedure.

(1) In all cases where a nuisance shall be found in any building or upon any ground or other premises within the jurisdiction of the Town, at least twenty-four (24) hours' notice shall be given in writing, signed by the Chief of Police or designee, to the owner of the premises or occupant or person in possession, charge or control of such building or other premises or person creating such nuisance where such person is known and can be found to remove such nuisance. Notice shall be deemed to have occurred upon either the mailing of the notice by first class mail, personal service of the notice or posting of the notice upon the property in a conspicuous place.

(2) Should any such nuisance, within or upon any public or private premises or as aforesaid, not be corrected within the time period stated in the notice provided for in Paragraph (b)(1), which period shall be at least seven (7) days, the Chief of Police may declare such to be a nuisance and order the abatement of such nuisance, which order shall be executed without delay, and the Chief of Police shall have the authority to call for the necessary assistance therefor.

(3) In case of any such nuisance in or upon any public park, street, avenue, alley, sidewalk, highway or public grounds in the Town, the Town may abate the nuisance forthwith without such notice being given.

(4) Any officer who shall be duly authorized to abate any nuisance specified in this Chapter shall have the authority to engage the necessary assistance and incur the necessary expense therefor.

(c) If the individual responsible does not abate the nuisance within the stated period of time, the Town may elect to abate the nuisance by entering upon the property and removing the condition or conditions constituting a nuisance. The Town may abate any nuisance by authorizing a private contractor to enter the property and remove the condition or conditions. (Ord. 280 §9, 1979; Ord. 08 §6, 2006)

8.04.130 Abatement; collection of costs.

(a) Upon the Town or contractor's completing eradication of the violation pursuant to this Chapter, a notice of assessment, including the right to a hearing as set forth in this Section, shall be sent by first class mail from the Town Clerk to the property owner at the address listed for the property owner in the County or Town records or posted on the property.

(b) For purposes of this Section, *property owner* shall include renters, lessees, occupants or persons in possession of the property.

(c) The property owner shall have forty-five (45) days from the date the notice of assessment is mailed, or from the date the property is posted, to pay the assessment. Failure to pay within the time allotted will cause the assessment to be recorded against the property, together with an assessment of ten percent (10%) for costs of collection, and the assessment shall be collected in the same manner as a real estate tax upon the property. The assessment will constitute a continuing lien against such property.

(d) The amount of the assessment shall include, in addition to all contractors' charges, all direct Town costs, including inspection costs, attorneys' fees, court costs and all other associated costs, together with an assessment of five percent (5%) for inspection and other incidental costs in connection therewith. The assessment may be paid any time prior to the assessment being certified to the County Treasurer. All payments must be made directly to the Town Clerk.

(e) Unpaid assessments will be filed with the proper office of the County Clerk and Recorder's office and with the County Treasurer, who shall collect the entire assessment in the same manner as other taxes are collected.

(f) A property owner may file a written objection to such assessment with the Town Clerk within thirty (30) days from the date the notice of assessment was mailed or, if the notice is returned, within thirty (30) days from the date the property was posted. The objection must include a phone number and address of the objecting party and must state with specificity the basis for the objection.

(g) Upon receipt of an objection, the Town shall set a hearing date, which hearing shall be held within thirty (30) days from receipt of the written objection. Hearings shall be before the Town Administrator or designee. Notice of the hearing date shall be mailed to the person making the objection. Failure to include all required information in the objection, including the address, will constitute a waiver of the right to file an objection.

(h) A property owner who requests a hearing pursuant to this Section will be charged an additional administrative cost, to be established by resolution of the Board of Selectmen, should the

Town Administrator or designee find in favor of the Town. Failure of such person to attend the hearing at the date and time scheduled shall constitute a waiver of such right to a hearing and a determination of all issues regarding the assessment.

(i) The hearing held pursuant to this Section shall be conducted in an informal manner and shall not strictly follow the technical rules of evidence. The Town shall have the burden of establishing there was probable cause of demonstrating that a violation existed upon the property prior to abatement, and that an abatement was conducted by the Town. The standard of proof at such hearing shall be by a preponderance of the evidence. A written decision shall be prepared at the conclusion of the hearing and mailed to the property owner, which decision shall be deemed effective upon execution of the written decision. (Ord. 280 §10, 1979; Ord. 2 §1, 2003; Ord. 08 §7, 2006)

8.04.140 Remedies cumulative.

No remedy provided in this Chapter shall be exclusive, but the same shall be cumulative, and the taking of any action under this Chapter, including charge or conviction of violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action under this Chapter to abate or enjoin any nuisance found to exist. (Ord. 280 §11, 1979)

8.04.150 Remedies concurrent.

Whenever a nuisance exists, no remedy provided for in this Chapter shall be exclusive of any other charge or action, and, when applicable, the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provisions of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law. (Ord. 280 §12, 1979)

8.04.160 Dumping waste prohibited.

Dumping, throwing or placing any rubbish, garbage, cans, boxes, debris, grass clippings or other waste materials on any public place in the Town is a nuisance and prohibited. Dumping of waste materials in a public dump specifically designated by order of the Town Administrator as a dump in compliance with Town zoning regulations and such other regulations as the Town Administrator may direct shall not be deemed a violation of this Section. (Ord. 280 §14(1), 1979; Ord. 2 §1, 2003)

8.04.170 Accumulation of unhealthy matter prohibited.

It is unlawful and constitutes a nuisance for any person to pile, store or allow to accumulate any junk, junked vehicle, rubbish, trash, garbage, weeds or animal feces on any lot or real estate within the Town which could harbor and conceal harmful vermin, rodents or insects, or which are unsafe, unhealthy or unsightly to the public. (Ord. 280 §14(2), 1979; Ord. 2 §1, 2003)

8.04.180 Accumulation of noxious weeds or rank vegetation prohibited.

A public nuisance exists where there is permitted or maintained noxious weeds on any lot or parcel of land within the Town an accumulation of rank vegetation of an average height greater than twelve (12) inches. (Ord. 280 §14(3), 1979; Ord. 2 §1, 2003)

8.04.190 Abandoning motor vehicle prohibited.

(a) Any person who abandons any motor vehicle upon a street, highway, right-of-way or any other public property, or upon any private property without the express consent of the owner or person in lawful charge of such private property, commits the violation of abandonment of a motor vehicle.

(b) It is prima facie evidence of abandonment that:

(1) The motor vehicle has been left for more than seventy-two (72) hours unattended and unmoved;

(2) License plates or other identifying marks have been removed from the motor vehicle;

(3) The motor vehicle has been damaged or is deteriorating so extensively that it has value only for junk or salvage; or

(4) The owner has been notified by a law enforcement agency to remove the motor vehicle, and it has not been removed within seventy-two (72) hours after notification. (Ord. 280 §14(4), 1979; Ord. 2 §1, 2003)

8.04.200 Storing of construction equipment, machinery and inoperable vehicles prohibited; exceptions.

(a) The unenclosed storing, parking or placement of construction equipment and vehicles, machinery of any kind and inoperable vehicles within the Town shall constitute a public nuisance subject to abatement pursuant to the terms of this Chapter.

(b) Except as provided in Subsection (c) below, it is unlawful to store, park or place, or to permit to be stored, parked or placed, any construction equipment or vehicle, machinery of any kind or inoperable vehicle on any lot or parcel within the Town unless it is fully enclosed in a garage or other building.

(c) The provisions of Subsection (b) above shall not apply to the following:

(1) The temporary unenclosed parking or storage of a single inoperable vehicle, excepting construction vehicles and equipment, on any lot or parcel for a period up to two (2) weeks, notice of which must be provided in writing and in advance by the owner of the lot or parcel to the Chief of Police/Town Marshal.

(2) The parking, storage or placement of any construction vehicle or equipment, machinery or inoperable vehicle on the premises of, and undertaken in connection with, a duly licensed business being operated in conformity with all applicable zoning regulations. Such parking, storage or placement shall be adequately screened and secured from observation and access at ground level from all adjacent public or private property and rights-of-way.

(3) The parking, storage or placement of any construction vehicles, equipment or machinery on the premises of, and being used in conjunction with, an active construction site.

(d) The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- (1) Absence of a current license plate upon the vehicle;
- (2) Placement of the vehicle, or parts thereof, upon jacks, blocks, chains or other supports;
- (3) Absence of one (1) or more parts of the vehicle necessary for its lawful operation upon the streets and highways; or
- (4) The absence of any substantial movement of the vehicle from where it is parked for more than thirty (30) days. (Ord. 491 §1, 1998)

8.04.210 Violating building or zoning code prohibited; storing building materials prohibited when.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property or building or any other structure in the Town in a condition which is in violation of the building code or zoning ordinances of the Town.

(b) It is expressly declared to constitute a nuisance if surplus building material remains stored, discarded or placed on property which is not subject to an active building permit, or remains on a construction site longer than six (6) months after the issuance of a certificate of occupancy, except if such material is fully enclosed in a shed or other building. (Ord. 280 §14(5)(f), 1979; Ord. 2 §1, 2003)

8.04.220 Dangerous excavations prohibited.

Excavations offer an invitation to children and persons unfamiliar with the concealed dangers of excavations to explore them; further, these excavations may provide shelter for undesirable persons and animals. Therefore, any excavations which a reasonable person would deem dangerous and which are not appropriately boarded up or surrounded by a fence are declared a nuisance. (Ord. 280 §14(5)(g), 1979)

8.04.230 Violation; penalty.

(a) It is unlawful for any person to create or cause a nuisance to exist on any property within the Town.

(b) It is unlawful for any person to maintain or allow a nuisance to exist on his or her property, or on property to which he or she has a right of possession or control.

(c) Any person convicted of or found liable for creating or maintaining any nuisance as provided for in this Chapter shall be subject to a fine up to one thousand dollars (\$1,000.00) for each and every violation. (Ord. 401 §4, 1987; Ord. 2 §1, 2003)

CHAPTER 8.08

Dumping Wastes

8.08.010 Depositing refuse prohibited.

Except as otherwise specifically provided in this Chapter, no person shall deposit, accumulate, dump discard or dispose of any refuse, ash or waste on or at any place in the Town unless such material is deposited, dumped or disposed of at a place and in a manner authorized and designated from time to time by the resolutions or ordinances of the Board of Selectmen. The terms *refuse*, *ash* and *waste* shall include garbage, kitchen fragments, vegetable matter, animal, household and industrial waste, cuttings of trees, shrubs and grass, cans, bottles and other containers, tree trunks and branches, scrap and discarded metal, dead or decayed organic matter, building material, paper, clothing, motors, tires and parts, animal excreta, wire and fence material, cinders, waste coal or other fuel, plaster, cement, wood scraps, and every other sort and character of refuse and waste from households, living quarters, animal life, mines and industries. (Ord. 110 §1, 1953; Ord. 2 §1, 2003)

8.08.020 Temporary storage permitted when.

(a) This Chapter shall not forbid the temporary storage and deposit of refuse, ash or waste on a person's own premises, or on a premises possessed and occupied by him or her if such waste originated on such premises and also:

(1) It is fully enclosed or appropriately secured and stored or deposited in a manner and place which avoids risk of fire, infection, unpleasant or unhealthy odor, the gathering of insects, or the creation of other conditions of nuisance and which manner and place are lawful under existing laws and ordinances; and

(2) Is stored and held only temporarily pending further disposal in a reasonable time.

(b) All waste, refuse and ash, and all waste containers, shall be sufficiently covered to prevent the movement or dispersal of such materials by wind, water or animals at all times.

(c) *Waste* shall be defined as *rubbish* stated in Section 8.04.030. (Ord. 110 §2, 1953; Ord. 462 §1, 1994; Ord. 2 §1, 2003)

8.08.030 Method of authorized dumping designated.

Refuse and waste, when and if deposited in an authorized dump or place designated by the Board of Selectmen, shall be conveyed and deposited in such condition and fashion as to avoid risk of being carried away by wind, water, animals or other natural means. Paper and other light materials shall be packaged, wrapped or tied, or covered sufficiently on deposit to prevent dispersal. (Ord. 110 §3, 1953)

8.08.040 Compliance with dump regulations required.

Every person shall comply with all directions as to place, manner, time or method of disposal which are posted at any dump or refuse disposal site. (Ord. 110 §4, 1953; Ord. 2 §1, 2003)

8.08.050 Resolution to govern authorized dumping places.

The Board of Selectmen may from time to time authorize or forbid by resolution or ordinance the use of any place for dumping, storage or disposal, and govern the manner, time and conditions of disposal. The publication in a newspaper of general circulation within the Town, or the posting of such resolution or ordinance in three (3) public places, shall be notice of its terms, in the absence of actual notice. (Ord. 110 §5, 1953; Ord. 2 §1, 2003)

CHAPTER 8.12

Tailings Ponds and Piles

8.12.010 Findings.

The maintenance and existence of tailings ponds and piles are declared to be a menace to the public safety, health and welfare and to constitute a nuisance for the reasons that wind-blown or water-borne particulates, dust, silt and dried tailings generated by such ponds and piles can cause an irritation or sickness when inhaled or ingested by children or other members of the public, pollute ground and/or surface water, and create a lessening of property values in all areas surrounding such facilities. (Ord. 107 §1, 1953; Ord. 2 §1, 2003)

8.12.020 Tailings ponds and piles defined.

Tailings ponds and piles are defined as any accumulation of refuse materials customarily discarded or otherwise eliminated as a result of and in connection with the operation of a concentrating mill for the reduction of mineral-bearing ores. (Ord. 107 §2, 1953; Ord. 2 §1, 2003)

8.12.030 Prohibited.

The use of any land within the corporate limits of the Town a tailings pond or pile is expressly prohibited. (Ord. 107 §3, 1953; Ord. 2 §1, 2003)

CHAPTER 8.16

Fireworks

8.16.010 Discharging fireworks prohibited.

It is unlawful to set off, shoot or otherwise discharge any fireworks of any type in or over any portion of the Town except as authorized by permit issued pursuant to Section 9.36.030 of this Code. *Fireworks* shall have the meaning as provided in Section 9.36.010 of this Code. (Ord. 94 §2, 1948; Ord. 2 §1, 2003)