

**AN ORDINANCE AMENDING TITLE XV LAND USAGE
OF THE MILLS RIVER CODE OF ORDINANCES**

**ARTICLE NO. 1
AUTHORITY**

This Ordinance is enacted by the Town Council of Mills River, North Carolina pursuant to Chapter 160D of the North Carolina General Statutes. Town Council does hereby ordain and enact into law the following amendments to the Zoning Ordinance for the Town of Mills River.

**ARTICLE II
AMENDMENT TO ZONING ORDINANCE**

The Zoning Ordinance of the Town of Mills River as enacted effective March 1, 2004, and with various amendments, is further amended as to the following articles, chapters, sections and subsections:

Chapter 152 Nuisance

The provisions set forth in this chapter are designed to ensure that the health, safety, and general welfare of the people of the Town of Mills River pursuant to powers granted under North Carolina General Statutes § 160A-175, § 160A-193, § 160A-303, § 160A-303.1, § 160A-303.2; the Mills River Town Code; subsequent recodifications and/or amendments; and other applicable ordinances as may be adopted in the future specifically in regards to noise. See Exhibit A for details.

Except as specifically amended herein, the Zoning Ordinance of the Town of Mills River shall remain valid and in full force and effect.

**ARTICLE III
SEVERABILITY**

Each section and subsection of said ordinance as adopted herein constitutes a separate and distinct provision. Whenever possible, each provision of such Ordinance shall be interpreted in a manner as to be effective and valid under applicable law. In the event that any provision so such Ordinance shall finally be determined by competent court or tribunal to be unlawful or unenforceable, such provision shall be deemed severed from such Ordinance but every other provision of the Ordinance shall remain in full force and effect.

**ARTICLE NO. IV
EFFECTIVE DATE**

This Ordinance and the Amendment to the Zoning Ordinance of the Town of Mills River, North Carolina shall take effect and be effective at 12:01 AM on May 14, 2021 and shall be in full force and effect at all times thereafter until duly amended.

ADOPTED AND PASSED by the Town Council of the Town of Mills River, North Carolina, this the 13th day of May, 2021.



Chae T. Davis
Mayor

ATTEST By:



Susan L. Powell, MMC, NCCMC
Finance Director/Town Clerk



TITLE XV: LAND USAGE

CHAPTER 152: NUISANCES

1	152.01	Purpose and objectives
2	152.02	Jurisdiction and exception
3	152.03	Definitions
4	152.04	Prohibitions
5	152.05	Outdoor storage
6	152.21	Establishment of Noise Ordinance
7	152.22	Prohibited Uses
8	152.23	Exceptions
9	152.24	Permits for Amplified Sound
10	152.25	Noise Complaints
11	152.26	Warnings and Violations
12	152. 91 06	Administration and enforcement
13	152. 92 07	Investigation and response to public nuisance
14	152. 93 08	Vehicle restoration permit
15	152. 94 09	Appeals
16	152.99	Violations, penalties, costs, and reimbursements

17 § 152.01 PURPOSE AND OBJECTIVES.

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

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

24 (1) To prevent injury and illness to occupants of property and the
 25 public and to remove public nuisances.

26 (2) To provide town wide standards for the abatement of public
 27 nuisances, including but not limited to [noise](#), solid waste, junked motor vehicles and
 28 abandoned manufactured homes.

Town of Mills River, NC Code of Ordinances

29 (3) To establish responsibility of involved parties and assure that
30 people are not unnecessarily exposed to dangers of public nuisances.

31 (4) To ensure proper actions may be taken to abate public
32 nuisances.

33 (Ord. 2019-02, passed 10-12-2019)

34 **§ 152.02 JURISDICTION AND EXCEPTION.**

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

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

42 (Ord. 2019-02, passed 10-12-2019)

43 **§ 152.03 DEFINITIONS.**

44 The following terms are defined for purposes of this chapter:

45 **ABANDONED MANUFACTURED HOME.** A manufactured home that has not
46 had legal power or was not properly connected to a permitted septic/sewer system
47 and water supply in the most recent six months, not to be interpreted to include a
48 manufactured home stored or parked in accordance with a valid zoning permit.

49 **ABATEMENT.** The proper removal, repair, and/or containment of substances
50 or materials hazardous to humans and/or the environment. Abatement is part of
51 remediation.

52 **AMPLIFIED SOUND.** Using or operating a loudspeaker or other sound
53 **amplification device for the purpose of commercial advertising, giving instructions.**

Town of Mills River, NC Code of Ordinances

54 [information, directions, talks, addresses, lectures, or providing entertainment to any](#)
55 [persons or assemblage of persons on any private or public property.](#)

56 ***BUILDING.*** Any structure having a roof supported by columns or by walls and
57 intended for shelter, housing or enclosure of persons, animals or chattels. Two
58 buildings connected by a common roof shall be considered as one building, provided
59 that the width of the connecting roof shall be at least 20% of the principal building
60 width, but in no case less than six feet in width. The connection of two buildings by
61 means of an open porch, breeze way or passageway without a roof, or with a roof less
62 than six feet in width, shall not be deemed to make them one building.

63 [DISTURBING NOISE. Noise which is perceived by a person of ordinary](#)
64 [sensibilities as interrupting the normal peace and calm of the area. In determining](#)
65 [whether a noise is unreasonably loud and disturbing, the following factors incident](#)
66 [to such noise are to be considered: whether the noise has been enhanced in volume](#)
67 [or range by any type of electronic or mechanical means.](#)

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

75 ***JUNKED MOTOR VEHICLE.*** A motor vehicle that does not display a current
76 license plate or vehicle registration and is partially dismantled or wrecked, cannot be
77 self-propelled or moved in the manner it was originally intended to move, or is more
78 than five years old and appears to be worth less than \$500 as provided by the
79 municipality, or a junked motor vehicle as defined in G.S. 160A-303.2.

Town of Mills River, NC Code of Ordinances

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

84 **OCCUPANT.** Any person who occupies real property, whether with or without
85 any right, title or interest in the property, and any person in possession or charge of
86 such property, in the event the owner resides or is located elsewhere.

87 **OWNER.** Any person, persons, organization, or corporation that owns, in
88 whole or in part, the land, structure, or other property or is the purchaser of the
89 property under contract for deed.

90 **PERSONAL PROPERTY.** All property other than that defined in the definitions
91 of **PROPERTY** and **REAL PROPERTY, REAL ESTATE AND LAND** of this section that is
92 subject to ownership.

93 **PLANNING/ZONING DEPARTMENT.** The town department responsible for
94 enforcing this chapter.

95 **PROPERTY.** Publicly or privately owned real property including parcels of
96 land, buildings, or structures.

97 **PROPERTY AGENT.** A person authorized by a property owner to act in
98 transacting business matters or in managing the affairs of the subject property.

99 **PUBLIC NUISANCE.** Any activity or use of property or personal property or
100 failure to act that adversely affects the public and shall include, but is not limited to,
101 any condition which poses an immediate and direct hazard to human health if left
102 unheeded due to the existence of the condition itself or due to the immediate threat
103 of transmission of disease through insects, animals, or other means of transmission
104 or infections.

Town of Mills River, NC Code of Ordinances

105 **RECREATIONAL VEHICLE.** A vehicular type unit primarily designed as
106 temporary and mobile living quarters for recreational, camping or travel use, which
107 either has its own motive power or is mounted on and drawn by another vehicle. The
108 units do not satisfy the dimensional requirements of a manufactured home.

109 **REMEDATION.** The action of stopping or reversing conditions, uses,
110 substances or materials hazardous to humans and/or the environment or otherwise
111 creating a nuisance.

112 **UNREASONABLY LOUD NOISE.** A level of noise that is substantially
113 incompatible with the time and location where created to the extent that it creates an
114 actual or imminent interference with peace or good order.

115 **VEHICLE RESTORATION PERMIT.** A permit that allows persons to actively
116 restore an unlicensed and unregistered vehicle.

117 (Ord. 2019-02, passed 10-12-2019)

118 **§ 152.04 PROHIBITIONS.**

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

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

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

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

Town of Mills River, NC Code of Ordinances

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

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

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

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

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

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

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

151 (K) Recreational vehicles used to store solid waste.

152 (Ord. 2019-02, passed 10-12-2019)

153 **§ 152.05 OUTDOOR STORAGE.**

154 Outdoor storage by commercial and industrial uses shall be limited to items
155 that are designed and intended for permanent outdoor usage, storage, and/or sale.

156 Outdoor storage areas in business and industrial zones shall conform to a minimum

Town of Mills River, NC Code of Ordinances

157 of one-half the minimum front building setback and not block or obstruct parking
158 spaces or any line of sight for a public road.

159 (Ord. 2019-02, passed 10-12-2019)

160 NOISE CONTROL

161 § 152.21 ESTABLISHMENT OF NOISE ORDINANCE.

162 This subchapter shall be known as the "Noise Ordinance for the Town of Mills River."

163 § 152.22 PROHIBITED NOISES.

164 (A) Disturbing noise which is perceived by a person of ordinary
165 sensibilities as interrupting the normal peace and calm of the area.

166 (B) Unreasonably loud noise, which is a level of noise that is substantially
167 incompatible with the time and location where created to the extent that it creates an
168 actual or imminent interference with peace or good order.

169 _____ (1) In determining whether a noise is unreasonably loud and
170 disturbing, the following factors incident to such noise are to be considered:

171 _____ (i) Time of day

172 _____ (ii) Proximity to residential structures

173 _____ (iii) Whether the noise is recurrent, intermittent, or constant

174 _____ (iv) The volume and intensity

175 _____ (v) Whether the noise has been enhanced in volume or range by
176 any type of mechanical means

177 _____ (vi) The nature and zoning of the area

178 _____ (vii) Whether the noise is related to the normal operation of a
179 business or other labor activity, or is the result of some use for
180 individual purposes

Town of Mills River, NC Code of Ordinances

181 (viii) Whether the noise is subject to being controlled without
182 unreasonable effort or expense to the creator thereof.

183 (C) The playing of any radio, phonograph or other musical instrument in such
184 a manner or with such volume, particularly during the hours between 9:00 p.m. and
185 7:00 a.m. Sunday through Thursday and 10:00 p.m. and 7:00 a.m. Friday and
186 Saturday, so as to annoy or disturb the quiet, comfort or repose of any persons in any
187 dwelling, hotel or other type of residence.

188 (D) Using or operating a loudspeaker or other sound amplification device or
189 system for the purpose of commercial advertising, giving instructions, information,
190 directions, talks, addresses, lectures, or providing entertainment to any persons or
191 assemblage of persons on any private or public property, between the hours of 9:00
192 p.m. and 7:00 a.m. the following day on Sunday through Thursday and between the
193 hours of 10:00 p.m. and 7:00 a.m. the following day on Friday and Saturday is hereby
194 prohibited.

195 **§ 152.23 EXCEPTIONS.**

196 (A) The following are exempt from the provisions of this subchapter:

197 (1) Any noise resulting from activities of a temporary duration
198 permitted by law, and for which a license or permit therefore has been granted
199 by the Town in accordance with the Mills River Town Code. Regulations of
200 noises emitting from operations under permit shall be according to the
201 conditions and limits stated on the permit.

202 (2) Unamplified sound at street fairs, parades, or other special events
203 permitted by the Town.

204 (3) Amplified sound emanating from religious institutions.

205 (4) This chapter shall not regulate property being actively used as a
206 bona fide farm which is any tract of land used for dairying, the raising of

Town of Mills River, NC Code of Ordinances

207 agricultural products, forest products, livestock or poultry, or any other use
208 defined as *AGRICULTURE* in § 154.007 of the Town Code and including
209 facilities for the sale of such products from the premises where produced.

210 **§ 152.24 PERMITS FOR AMPLIFIED SOUND.**

211 (A) Before a person or group of persons may produce or cause to be
212 produced amplified sound, as defined in §152.03, a permit must be secured from the
213 Town of Mills River.

214 (B) Any person or group or persons desiring a permit shall apply as
215 provided herein and shall provide the minimum requirements listed below:.

216 (1) Property Address

217 (2) Business Name

218 (3) Property Owner Name and signature

219 (4) Responsible party (general manager, site manager, or similar)

220 (5) Contact information for all parties

221 (C) All applications shall be submitted to the Town of Mills River prior to
222 producing amplified sound. Failure to comply with this requirement shall be
223 grounds for denying the permit.

224 (D) Permit holders shall agree to cooperate with the Henderson County
225 Sheriff's Department and the Town of Mills River in enforcing the noise ordinance by
226 having signers of the permit available at the site of the event during the entire time
227 for which a permit has been issued and capable of assisting in enforcing the noise
228 control ordinance. Failure of the permittee or designees to be present or to assist the
229 Henderson County Sheriff's Department and the Town of Mills River in compliance of
230 this subchapter will result in revocation of said permit.

231 **§ 152.25 NOISE COMPLAINTS.**

232 (A) Any person having reasonable grounds for believing any provision of
233 this subchapter is being violated may make a report thereof to the Henderson County
234 Sheriff's Department or the Town of Mills River, which shall investigate the alleged
235 violation. If any such investigation reveals a violation, the investigating deputy or
236 code enforcement officer has the authority to cause a written complaint to be made
237 and may issue a citation for a civil penalty, and may obtain other enforcement
238 measure as allowed in this chapter.

239 (B) It shall be unlawful for any person to file a false report or to provide
240 false information to any enforcement official involving any investigation of any
241 reported violation of this subchapter. Any person found violating this provision shall
242 be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.

243 (C) It shall be unlawful for any person to repeatedly file frivolous or
244 unfounded complaints with law enforcement in order to intimidate or harass any
245 member of such department or any animal owner, or to otherwise hinder or interfere
246 with any function of the department of animal control. Any person found violating
247 this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more
248 than \$500.00.

249 **§ 152.26 WARNINGS AND VIOLATIONS.**

250 (A) Any producer of prohibited noise as defined in this subchapter that has
251 been determined to be non-cooperative pursuant to this subchapter shall be subject
252 to enhanced civil penalties. Violations shall result in the following:

253 (1) Upon a first violation, enforcing authority shall issue a warning.

254 (2) A second violation shall result in a fine not more than \$500.00.

255 (3) A third violation shall result in a fine not more than \$1,000.

Town of Mills River, NC Code of Ordinances

256 (4) Subsequent and continued violations will result in a penalty of \$1,000 per day
 257 of noncompliance.

ADMINISTRATION

§ 152.9106 ADMINISTRATION AND ENFORCEMENT.

260 Where there is a violation of any provision of this chapter, the town, in its
 261 discretion, may require any appropriate action as described in this chapter.

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

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

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

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

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

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

Town of Mills River, NC Code of Ordinances

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

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

287 (4) For good cause shown, the owner or occupant may request
288 authorization from the Planning/Zoning Department for an extension of time to
289 complete abatement activities. An extension may be granted if the extension does not
290 increase the risk to public or safety and is deemed appropriate. Extensions may not
291 be granted unless the owner or occupant shows substantial improvement toward
292 abating the nuisance and shall be for a period of be no longer than 30 days. Additional
293 extensions shall be at the discretion of the Planning/Zoning Department and shall
294 only be considered if there has been substantial and continuing improvement
295 towards abating the nuisance.

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

Town of Mills River, NC Code of Ordinances

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

307 (Ord. 2019-02, passed 10-12-2019)

308 | **§ 152.9207 INVESTIGATION AND RESPONSE TO PUBLIC**
309 **NUISANCE.**

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

316 (1) Property location by street address, parcel identification
317 number, or other property description.

318 (2) Information identifying the nature of the public nuisance at the
319 property.

320 (3) A summary of the owner's and occupant's responsibilities under
321 this chapter.

322 (4) Specific orders for abatement or remediation of the public
323 nuisance.

324 (5) A date for completion of the abatement not to exceed 30 days
325 following the receipt of the notice unless a shorter time is required due to the
326 Planning/Zoning Department's further determination that the immediate abatement
327 is necessary to protect public and safety. In such cases, the reason for a shortened
328 abatement period shall be specified.

Town of Mills River, NC Code of Ordinances

329 (6) Information regarding a right of appeal as provided in § 152.09
330 of this chapter and that, unless the threat to public is abated or removed in accordance
331 with the terms of the notice, the Planning/Zoning Department will have the public
332 nuisance abated or removed at the expense of the owner under the provisions of this
333 chapter and/or other applicable state or local law.

334 (B) *Unknown or absent* property owner. In the event the owner of the
335 property is unknown or absent and has no known representative upon whom the
336 notice can be served, the Planning/Zoning Department shall post a written or printed
337 notice on the property stating that, unless the threat to the public is abated or
338 removed within 30 days of the date of posting, the Planning/Zoning Department will
339 have the public nuisance abated or removed at the expense of the owner under the
340 provisions of this chapter and/or other applicable state or local law.

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

344 (1) Child Protective Services Division of the Henderson County
345 Department of Social Services in situations of potential child maltreatment or
346 endangerment.

347 (2) Adult Protective Services Division of the Henderson County
348 Department of Social Services in situations of potential vulnerable adult
349 maltreatment or endangerment.

350 (3) Neighbors in close proximity likely to be affected by the
351 conditions found at the site.

352 (4) Local law enforcement officers.

353 (5) Henderson County Environmental (Public) Health.

Town of Mills River, NC Code of Ordinances

354 (6) Other state and local authorities that may have public or
355 environmental protection responsibilities.

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

364 (E) *Abating public nuisance.* If the owner, property agent or occupant fails
365 or neglects to comply with the requirements in the notice provided under division (A)
366 of this section, then the Planning/Zoning Department shall abate or remediate the
367 public nuisance described in the notice. The town will recoup such costs as necessary
368 to abate the public nuisance as provided in § 152.99 of this chapter.

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

375 (Ord. 2019-02, passed 10-12-2019)

376 **§ 152.9308 VEHICLE RESTORATION PERMIT.**

377 (A) Persons storing any motor vehicle for more than 30 days outside a fully
378 enclosed permanent structure for the purpose of restoration shall obtain a vehicle

Town of Mills River, NC Code of Ordinances

379 restoration permit from the Planning/Zoning Department. The permit shall be placed
380 in the vehicle in a location viewable from outside the vehicle.

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

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

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

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

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

395 (Ord. 2019-02, passed 10-12-2019)

396 **§ 152.9409 APPEALS.**

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

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

Town of Mills River, NC Code of Ordinances

404 (1) *Schedule.* The [evidentiary](#) hearing shall be held at the next
405 available meeting that satisfies public notice requirements after the request for a
406 hearing was received.

407 (2) *Witnesses and evidence.* All parties shall have full opportunity to
408 respond to and present evidence and witnesses.

409 (3) *Standard of proof.* The appellant shall have the burden of
410 proving its position by clear and convincing evidence.

411 (4) *Rules of evidence.* Hearings shall be informal and the rules of
412 evidence as applied in the courts shall not apply. Irrelevant, immaterial, and
413 repetitious evidence shall be excluded.

414 (C) *Record of hearing.* The hearing shall be recorded, and the minutes of the
415 meeting shall be approved by the Zoning Board of Adjustment at their next scheduled
416 meeting.

417 (D) *Notice of decision.* The decision of the Zoning Board of Adjustment shall
418 be issued in writing within ten calendar days following the hearing. Unless otherwise
419 provided by law, the decision of the Zoning Board of Adjustment shall constitute the
420 final decision.

421 (E) *Further appellate rights.* Any party aggrieved by a final decision is
422 entitled to judicial review of the decision. A petition for a writ of certiorari by the
423 party must be filed with the Court of Appeals not more than 30 calendar days after
424 notice of the final decision has been issued from the Zoning Board of Adjustment.

425 (Ord. 2019-02, passed 10-12-2019)

426 **§ 152.99 VIOLATIONS, PENALTIES, COSTS, AND**
427 **REIMBURSEMENTS.**

428 (A) *Civil penalties.* [Unless otherwise specified in this chapter,](#) Any person
429 who is an owner or occupant of property and who violates this chapter, or permits a

Town of Mills River, NC Code of Ordinances

430 nuisance to exist on the property under his/her control, or fails to take action to abate
431 the existence of the violation(s) within the time specified in the notice described in §
432 152.92 above, when ordered or notified to do so by the Planning/Zoning Department,
433 shall be subject to a civil penalty of \$50 or other amount as determined by Town
434 Council. Each day's violation shall be treated as a separate offense.

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

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

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

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

454 (F) Revocation of Development Approvals. In addition to initiation of
455 enforcement actions, Town issued permits may be revoked by notifying the holder in

Town of Mills River, NC Code of Ordinances

456 writing stating the reason for the revocation. The Town shall follow the same permit
457 review and approval process required for issuance of the permit, including any
458 required notice or hearing, in the review and approval of any revocation of that
459 permit. Permits shall be revoked for any substantial departure from the approved
460 application, plans, or specifications; for refusal or failure to comply with the
461 requirements of any applicable element of this chapter; or for false statements or
462 misrepresentations made in securing the permit. Any permit mistakenly issued in
463 violation of an applicable State law or local ordinance may also be revoked. The
464 revocation of a permit by a staff member may be appealed pursuant to G.S. § 160D-
465 405.

466 (Ord. 2019-02, passed 10-12-2019)

TITLE XV: LAND USAGE

CHAPTER 152: NUISANCES

1	152.01	Purpose and objectives
2	152.02	Jurisdiction and exception
3	152.03	Definitions
4	152.04	Prohibitions
5	152.05	Outdoor storage
6	152.21	Establishment of Noise Ordinance
7	152.22	Prohibited Uses
8	152.23	Exceptions
9	152.24	Permits for Amplified Sound
10	152.25	Noise Complaints
11	152.26	Warnings and Violations
12	152.9106	Administration and enforcement
13	152.9207	Investigation and response to public nuisance
14	152.9308	Vehicle restoration permit
15	152.9409	Appeals
16	152.99	Violations, penalties, costs, and reimbursements

17 **§ 152.01 PURPOSE AND OBJECTIVES.**

18 (A) *Purpose.* This Chapter is enacted to protect the health, safety, and general
19 welfare of the people of the Town of Mills River pursuant to powers granted under G.S. 160A-
20 175, G.S. 160A-193, G.S. 160A-303, G.S. 160A-303.1, G.S. 160A-303.2; the Mills River Town
21 Code; subsequent recodifications and/or amendments; and other applicable ordinances as may
22 be adopted in the future.

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

24 (1) To prevent injury and illness to occupants of property and the public
25 and to remove public nuisances.

26 (2) To provide town wide standards for the abatement of public nuisances,
27 including but not limited to [noise](#), solid waste, junked motor vehicles and abandoned
28 manufactured homes.

29 (3) To establish responsibility of involved parties and assure that people are
30 not unnecessarily exposed to dangers of public nuisances.

31 (4) To ensure proper actions may be taken to abate public nuisances.

32 (Ord. 2019-02, passed 10-12-2019)

33 **§ 152.02 JURISDICTION AND EXCEPTION.**

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

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

41 (Ord. 2019-02, passed 10-12-2019)

42 **§ 152.03 DEFINITIONS.**

43 The following terms are defined for purposes of this chapter:

44 **ABANDONED MANUFACTURED HOME.** A manufactured home that has not had legal
45 power or was not properly connected to a permitted septic/sewer system and water supply in
46 the most recent six months, not to be interpreted to include a manufactured home stored or
47 parked in accordance with a valid zoning permit.

48 **ABATEMENT.** The proper removal, repair, and/or containment of substances or
49 materials hazardous to humans and/or the environment. Abatement is part of remediation.

50 **AMPLIFIED SOUND.** Using or operating a loudspeaker or other sound amplification
51 device for the purpose of commercial advertising, giving instructions, information, directions,
52 talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons
53 on any private or public property.

54 **BUILDING.** Any structure having a roof supported by columns or by walls and intended
55 for shelter, housing or enclosure of persons, animals or chattels. Two buildings connected by a
56 common roof shall be considered as one building, provided that the width of the connecting
57 roof shall be at least 20% of the principal building width, but in no case less than six feet in
58 width. The connection of two buildings by means of an open porch, breeze way or passageway
59 without a roof, or with a roof less than six feet in width, shall not be deemed to make them one
60 building.

61 **DISTURBING NOISE.** Noise which is perceived by a person of ordinary sensibilities as
62 interrupting the normal peace and calm of the area. In determining whether a noise is
63 unreasonably loud and disturbing, the following factors incident to such noise are to be
64 considered: whether the noise has been enhanced in volume or range by any type of electronic
65 or mechanical means.

66 **JUNK.** Any discarded, abandoned, or scrapped copper, brass, metal, rope, rags,
67 batteries, appliances, paper or rubber; discarded, dismantled, abandoned, or wrecked
68 automobiles or other vehicles or parts thereof; dismantled or abandoned mobile/manufactured
69 homes or RV's or travel trailers or parts thereof; discarded, dismantled or wrecked motorized or

Town of Mills River, NC Code of Ordinances

70 non-motorized equipment or parts thereof; discarded or scrapped iron, steel or other scrapped
71 ferrous material; or any other materials, items or equipment similar to those listed herein.

72 **JUNKED MOTOR VEHICLE.** A motor vehicle that does not display a current license plate
73 or vehicle registration and is partially dismantled or wrecked, cannot be self-propelled or moved
74 in the manner it was originally intended to move, or is more than five years old and appears to
75 be worth less than \$500 as provided by the municipality, or a junked motor vehicle as defined in
76 G.S. 160A-303.2.

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

81 **OCCUPANT.** Any person who occupies real property, whether with or without any right,
82 title or interest in the property, and any person in possession or charge of such property, in the
83 event the owner resides or is located elsewhere.

84 **OWNER.** Any person, persons, organization, or corporation that owns, in whole or in
85 part, the land, structure, or other property or is the purchaser of the property under contract for
86 deed.

87 **PERSONAL PROPERTY.** All property other than that defined in the definitions of
88 **PROPERTY** and **REAL PROPERTY, REAL ESTATE AND LAND** of this section that is subject to
89 ownership.

90 **PLANNING/ZONING DEPARTMENT.** The town department responsible for enforcing this
91 chapter.

92 **PROPERTY.** Publicly or privately owned real property including parcels of land, buildings,
93 or structures.

94 **PROPERTY AGENT.** A person authorized by a property owner to act in transacting
95 business matters or in managing the affairs of the subject property.

96 **PUBLIC NUISANCE.** Any activity or use of property or personal property or failure to act
97 that adversely affects the public and shall include, but is not limited to, any condition which
98 poses an immediate and direct hazard to human health if left unheeded due to the existence of
99 the condition itself or due to the immediate threat of transmission of disease through insects,
100 animals, or other means of transmission or infections.

101 **RECREATIONAL VEHICLE.** A vehicular type unit primarily designed as temporary and
102 mobile living quarters for recreational, camping or travel use, which either has its own motive
103 power or is mounted on and drawn by another vehicle. The units do not satisfy the dimensional
104 requirements of a manufactured home.

105 **REMEDIATION.** The action of stopping or reversing conditions, uses, substances or
106 materials hazardous to humans and/or the environment or otherwise creating a nuisance.

107 UNREASONABLY LOUD NOISE. A level of noise that is substantially incompatible with
108 the time and location where created to the extent that it creates an actual or imminent
109 interference with peace or good order.

Formatted: Font: Bold

110 **VEHICLE RESTORATION PERMIT.** A permit that allows persons to actively restore an
111 unlicensed and unregistered vehicle.

112 (Ord. 2019-02, passed 10-12-2019)

113 **§ 152.04 PROHIBITIONS.**

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

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

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

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

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

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

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

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

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

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

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

142 (K) Recreational vehicles used to store solid waste.

143 (Ord. 2019-02, passed 10-12-2019)

144 **§ 152.05 OUTDOOR STORAGE.**

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

150 (Ord. 2019-02, passed 10-12-2019)

151 **NOISE CONTROL**

152 **§ 152.21 ESTABLISHMENT OF NOISE ORDINANCE.**

153 This subchapter shall be known as the "Noise Ordinance for the Town of Mills River."

154 **§ 152.22 PROHIBITED NOISES.**

155 (A) Disturbing noise which is perceived by a person of ordinary sensibilities as
156 interrupting the normal peace and calm of the area.

157 (B) Unreasonably loud noise, which is a level of noise that is substantially
158 incompatible with the time and location where created to the extent that it creates an actual or
159 imminent interference with peace or good order.

160 (1) In determining whether a noise is unreasonably loud and disturbing, the
161 following factors incident to such noise are to be considered:

162 (i) Time of day

163 (ii) Proximity to residential structures

164 (iii) Whether the noise is recurrent, intermittent, or constant

165 (iv) The volume and intensity

166 (v) Whether the noise has been enhanced in volume or range by any
167 type of mechanical means

168 (vi) The nature and zoning of the area

169 (vii) Whether the noise is related to the normal operation of a business
170 or other labor activity, or is the result of some use for individual
171 purposes

Formatted: Font: Not Bold

Formatted: Indent: Left: 1.5", First line: 0"

172 (viii) Whether the noise is subject to being controlled without
173 unreasonable effort or expense to the creator thereof.

174 (C) The playing of any radio, phonograph or other musical instrument in such a manner
175 or with such volume, particularly during the hours between 9:00 p.m. and 7:00 a.m. Sunday
176 through Thursday and 10:00 p.m. and 7:00 a.m. Friday and Saturday, so as to annoy or disturb
177 the quiet, comfort or repose of any persons in any dwelling, hotel or other type of residence.

178 (D) Using or operating a loudspeaker or other sound amplification device or system for
179 the purpose of commercial advertising, giving instructions, information, directions, talks,
180 addresses, lectures, or providing entertainment to any persons or assemblage of persons on any
181 private or public property, between the hours of 9:00 p.m. and 7:00 a.m. the following day on
182 Sunday through Thursday and between the hours of 10:00 p.m. and 7:00 a.m. the following day
183 on Friday and Saturday is hereby prohibited.

184 § 152.23 EXCEPTIONS.

185 (A) The following are exempt from the provisions of this subchapter:

186 (1) Any noise resulting from activities of a temporary duration permitted by
187 law, and for which a license or permit therefore has been granted by the Town in
188 accordance with the Mills River Town Code. Regulations of noises emitting from
189 operations under permit shall be according to the conditions and limits stated on the
190 permit.

191 (2) Unamplified sound at street fairs, parades, or other special events permitted
192 by the Town.

193 (3) Amplified sound emanating from religious institutions.

194 (4) This chapter shall not regulate property being actively used as a bona fide
195 farm which is any tract of land used for dairying, the raising of agricultural products,
196 forest products, livestock or poultry, or any other use defined as **AGRICULTURE** in §
197 154.007 of the Town Code and including facilities for the sale of such products from the
198 premises where produced.

199 § 152.24 PERMITS FOR AMPLIFIED SOUND.

200 (A) Before a person or group of persons may produce or cause to be produced
201 amplified sound, as defined in §152.03, a permit must be secured from the Town of Mills River.

202 (B) Any person or group or persons desiring a permit shall apply as provided herein
203 and shall provide the minimum requirements listed below:.

204 (1) Property Address

205 (2) Business Name

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0.5"

206 (3) Property Owner Name and signature

207 (4) Responsible party (general manager, site manager, or similar)

208 (5) Contact information for all parties

209 (C) All applications shall be submitted to the Town of Mills River prior to producing
210 amplified sound. Failure to comply with this requirement shall be grounds for denying
211 the permit.

Formatted: Indent: Left: 0.5", First line: 0"

212 (D) Permit holders shall agree to cooperate with the Henderson County Sheriff's
213 Department and the Town of Mills River in enforcing the noise ordinance by having signers of
214 the permit available at the site of the event during the entire time for which a permit has been
215 issued and capable of assisting in enforcing the noise control ordinance. Failure of the permittee
216 or designees to be present or to assist the Henderson County Sheriff's Department and the
217 Town of Mills River in compliance of this subchapter will result in revocation of said permit.

218 § 152.25 NOISE COMPLAINTS.

219 (A) Any person having reasonable grounds for believing any provision of this
220 subchapter is being violated may make a report thereof to the Henderson County Sheriff's
221 Department or the Town of Mills River, which shall investigate the alleged violation. If any such
222 investigation reveals a violation, the investigating deputy or code enforcement officer has the
223 authority to cause a written complaint to be made and may issue a citation for a civil penalty,
224 and may obtain other enforcement measure as allowed in this chapter.

225 (B) It shall be unlawful for any person to file a false report or to provide false
226 information to any enforcement official involving any investigation of any reported violation of
227 this subchapter. Any person found violating this provision shall be guilty of a Class 3
228 misdemeanor and shall be fined not more than \$500.00.

229 (C) It shall be unlawful for any person to repeatedly file frivolous or unfounded
230 complaints with law enforcement in order to intimidate or harass any member of such
231 department or any animal owner, or to otherwise hinder or interfere with any function of the
232 department of animal control. Any person found violating this provision shall be guilty of a Class
233 3 misdemeanor and shall be fined not more than \$500.00.

234 § 152.26 WARNINGS AND VIOLATIONS.

235 (A) Any producer of prohibited noise as defined in this subchapter that has been
236 determined to be non-cooperative pursuant to this subchapter shall be subject to enhanced civil
237 penalties. Violations shall result in the following:

238 (1) Upon a first violation, enforcing authority shall issue a warning.

239 (2) A second violation shall result in a fine not more than \$500.00.

240 (3) A third violation shall result in a fine not more than \$1,000.

241 [\(4\) Subsequent and continued violations will result in a penalty of \\$1,000 per day of](#)
242 [noncompliance.](#)

243 ADMINISTRATION

244 **§ 152.9106 ADMINISTRATION AND ENFORCEMENT.**

245 Where there is a violation of any provision of this chapter, the town, in its discretion,
246 may require any appropriate action as described in this chapter.

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

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

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

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

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

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

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

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

270 (4) For good cause shown, the owner or occupant may request
271 authorization from the Planning/Zoning Department for an extension of time to complete
272 abatement activities. An extension may be granted if the extension does not increase the risk to
273 public or safety and is deemed appropriate. Extensions may not be granted unless the owner or
274 occupant shows substantial improvement toward abating the nuisance and shall be for a period
275 of be no longer than 30 days. Additional extensions shall be at the discretion of the

276 Planning/Zoning Department and shall only be considered if there has been substantial and
277 continuing improvement towards abating the nuisance.

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

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

288 (Ord. 2019-02, passed 10-12-2019)

289 **§ 152.9207 INVESTIGATION AND RESPONSE TO PUBLIC**
290 **NUISANCE.**

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

296 (1) Property location by street address, parcel identification number, or
297 other property description.

298 (2) Information identifying the nature of the public nuisance at the
299 property.

300 (3) A summary of the owner's and occupant's responsibilities under this
301 chapter.

302 (4) Specific orders for abatement or remediation of the public nuisance.

303 (5) A date for completion of the abatement not to exceed 30 days following
304 the receipt of the notice unless a shorter time is required due to the Planning/Zoning
305 Department's further determination that the immediate abatement is necessary to protect
306 public and safety. In such cases, the reason for a shortened abatement period shall be specified.

307 (6) Information regarding a right of appeal as provided in § 152.09 of this
308 chapter and that, unless the threat to public is abated or removed in accordance with the terms
309 of the notice, the Planning/Zoning Department will have the public nuisance abated or removed
310 at the expense of the owner under the provisions of this chapter and/or other applicable state
311 or local law.

Town of Mills River, NC Code of Ordinances

312 (B) *Unknown or absent* property owner. In the event the owner of the property is
313 unknown or absent and has no known representative upon whom the notice can be served, the
314 Planning/Zoning Department shall post a written or printed notice on the property stating that,
315 unless the threat to the public is abated or removed within 30 days of the date of posting, the
316 Planning/Zoning Department will have the public nuisance abated or removed at the expense of
317 the owner under the provisions of this chapter and/or other applicable state or local law.

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

321 (1) Child Protective Services Division of the Henderson County Department
322 of Social Services in situations of potential child maltreatment or endangerment.

323 (2) Adult Protective Services Division of the Henderson County Department
324 of Social Services in situations of potential vulnerable adult maltreatment or endangerment.

325 (3) Neighbors in close proximity likely to be affected by the conditions
326 found at the site.

327 (4) Local law enforcement officers.

328 (5) Henderson County Environmental (Public) Health.

329 (6) Other state and local authorities that may have public or environmental
330 protection responsibilities.

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

338 (E) *Abating* public nuisance. If the owner, property agent or occupant fails or
339 neglects to comply with the requirements in the notice provided under division (A) of this
340 section, then the Planning/Zoning Department shall abate or remediate the public nuisance
341 described in the notice. The town will recoup such costs as necessary to abate the public
342 nuisance as provided in § 152.99 of this chapter.

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

348 (Ord. 2019-02, passed 10-12-2019)

349 **§ 152.9308 VEHICLE RESTORATION PERMIT.**

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

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

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

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

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

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

366 (Ord. 2019-02, passed 10-12-2019)

367 **§ 152.9409 APPEALS.**

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

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

374 (1) *Schedule.* The evidentiary hearing shall be held at the next available
375 meeting that satisfies public notice requirements after the request for a hearing was received.

376 (2) *Witnesses and evidence.* All parties shall have full opportunity to
377 respond to and present evidence and witnesses.

378 (3) *Standard of proof.* The appellant shall have the burden of proving its
379 position by clear and convincing evidence.

380 (4) *Rules of evidence.* Hearings shall be informal and the rules of evidence
381 as applied in the courts shall not apply. Irrelevant, immaterial, and repetitious evidence shall be
382 excluded.

Town of Mills River, NC Code of Ordinances

383 (C) *Record of hearing.* The hearing shall be recorded, and the minutes of the
384 meeting shall be approved by the Zoning Board of Adjustment at their next scheduled meeting.

385 (D) *Notice of decision.* The decision of the Zoning Board of Adjustment shall be
386 issued in writing within ten calendar days following the hearing. Unless otherwise provided by
387 law, the decision of the Zoning Board of Adjustment shall constitute the final decision.

388 (E) *Further appellate rights.* Any party aggrieved by a final decision is entitled to
389 judicial review of the decision. A petition for a writ of certiorari by the party must be filed with
390 the Court of Appeals not more than 30 calendar days after notice of the final decision has been
391 issued from the Zoning Board of Adjustment.

392 (Ord. 2019-02, passed 10-12-2019)

393 **§ 152.99 VIOLATIONS, PENALTIES, COSTS, AND**
394 **REIMBURSEMENTS.**

395 (A) *Civil penalties.* Unless otherwise specified in this chapter, Any person who is an
396 owner or occupant of property and who violates this chapter, or permits a nuisance to exist on
397 the property under his/her control, or fails to take action to abate the existence of the
398 violation(s) within the time specified in the notice described in § 152.92 above, when ordered or
399 notified to do so by the Planning/Zoning Department, shall be subject to a civil penalty of \$50 or
400 other amount as determined by Town Council. Each day's violation shall be treated as a separate
401 offense.

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

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

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

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

Town of Mills River, NC Code of Ordinances

419 (F) Revocation of Development Approvals. In addition to initiation of enforcement
420 actions, Town issued permits may be revoked by notifying the holder in writing stating the
421 reason for the revocation. The Town shall follow the same permit review and approval process
422 required for issuance of the permit, including any required notice or hearing, in the review and
423 approval of any revocation of that permit. Permits shall be revoked for any substantial
424 departure from the approved application, plans, or specifications; for refusal or failure to
425 comply with the requirements of any applicable element of this chapter; or for false statements
426 or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of
427 an applicable State law or local ordinance may also be revoked. The revocation of a permit by a
428 staff member may be appealed pursuant to G.S. § 160D-405.

429 (Ord. 2019-02, passed 10-12-2019)