

**CHAPTER 92: ABATEMENT OF HEALTH AND SAFETY  
NUISANCE ORDINANCE**

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## ***GENERAL PROVISIONS***

### **§ 92.01 TITLE.**

This chapter shall be known as the “Abatement of Health and Safety Nuisance Ordinance.”

### **§ 92.02 PURPOSE.**

The intent and purpose of this chapter is to establish a uniform procedure within the unincorporated areas of Surry County to enforce North Carolina General Statute 153A-140 and to establish procedural and enforcement safeguards to insure due process rights of owners and occupants of property within the County while protecting visitors and residents within the County from conditions that are dangerous or prejudicial to public health or safety.

### **§ 92.03 FRAMEWORK.**

This Ordinance specifies (1) the manner in which an owner or occupant of property in the County is provided notice of a dangerous or prejudicial condition on their property; (2) directs owner or occupant to remove, abate or remedy the dangerous or prejudicial condition; (3) permits owner or occupant a reasonable time for the dangerous or prejudicial condition to be remedied; and (4) provides authority for the County to remove, abate or remedy the condition should owner or occupant fail to or refuse to act within a reasonable time. Before the County takes action to remove, abate or remedy, the property owner or occupant has (1) a right to appeal, offer evidence and confront the complaining party; and (2) a right of appeal to the General Court of Justice from a finding by the Surry County Board of Commissioners.

### **§ 92.04 DEFINITIONS.**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

***BOARD OF COMMISSIONIERS.*** The currently elected Surry County Board of Commissioners and may be referred to as "the Board" or "the County Board."

**COUNTY.** Surry County.

**DEPARTMENT.** The Surry County Planning Department, responsible for enforcing this chapter and may be referred to as "the Department."

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

**ORDINANCE ENFORCEMENT OFFICER.** A County employee that is tasked with ordinance compliance and that reports to the Planning Director.

**OWNER.** Any person, partnership, persons, organization, company or corporation that owns improved or unimproved real property, in whole or in part, including, but not limited to the land, structure or other fixture permanently attached to the real property or improvement.

**PERSONAL PROPERTY.** All property other than that defined in the definitions of "property" and "real property, real estate and land" of this chapter and that is subject to ownership.

**PROPERTY.** Publically or privately owned real property including parcels of land, buildings or structures.

**HEALTH AND SAFETY NUISANCE.** Any act or condition that is dangerous or prejudicial to the public health or safety and shall include, but not be limited to, conditions which pose an immediate and direct hazard to human health if left unheeded due to the existence of the condition itself or due to the immediate threat of transmission or infection resulting from the condition.

**REAL PROPERTY, REAL ESTATE, AND LAND.** Not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging to or in any way appertaining to the property.

## **§ 92.05 ACCESS TO PREMISES AND RECORDS.**

(A) The owner or occupant shall, upon the request of the Department and after proper identification, permit access to all parts of the site or structure as necessary, and at any reasonable time for the purposes or inspection, remediation and abatement of nuisance conditions, and shall exhibit and allow copying of all records necessary to ascertain compliance with this chapter.

(B) If the occupant or owner will not permit entry upon the property, the Department shall complete the requirements of an Administrative search warrant in order to inspect the conditions.

## **§ 92.06 NUISANCE DETERMINATION.**

It shall be the duty of the Department and the Department shall have authority to determine whether a public health or safety nuisance exists and owner or occupant shall be afforded the privileges and prescriptions set forth in this chapter.

### ***STANDARDS AND REQUIREMENTS***

## **§ 92.20 INVESTIGATION AND RESPONSE TO HEALTH OR SAFETY NUISANCE.**

(A) Upon receipt by the Department of (1) a written complaint; (2) an oral or anonymous complaint; or (3) observance of circumstances by the Ordinance Enforcement Officer that a condition exists that may be dangerous or prejudicial to public health or safety, the notification shall be forwarded to the Director of the Department or Director's designee. The complaint shall identify the property location by street address or parcel identification number, if possible. It shall further include information identifying the nature of the public health or safety nuisance.

(B) Request to Investigate. Director shall assign an ordinance enforcement officer to investigate and document the conditions and formulate a written report including photographs (if relevant), a description of conditions, and a recommendation on whether further action is warranted. The investigation shall begin within ninety-six (96) hours of receipt of the complaint.

(C) No Action. If the Ordinance Enforcement Officer's recommendation is "no action", the file will be closed and the complainant will receive written notification of that fact.

(D) Further Action. If the Ordinance Enforcement Officer recommends further action to remove, abate or remedy the dangerous or prejudicial conditions, the Director will schedule an on-site meeting with the Ordinance Enforcement Officer to review the conditions and report Directors' recommendations to the County Manager.

(E) Owner/Occupant Notification. If the County Manager concurs with Director's recommendation, property owner and occupant shall receive (1) written notice that the conditions on owner's and occupant's property have been determined to be a public health or safety nuisance; and (2) an order to remove, abate or remedy said nuisance.

- (1) The notice and order shall be mailed by First Class Mail and by certified mail, return receipt requested, to the property address maintained by the Surry County Tax Administrator which is presumed to be owner's correct address. Additionally, occupant shall be personally served with notice and order by an officer authorized to serve a warrant as well as by First Class Mail addressed to occupant's last known address. If occupant and owner are one in the same, only one notice and order shall be mailed.

- (2) The notice and order may be posted upon the property in a manner permitted by law.
- (3) The notice and order shall include the property address by street location, parcel identification number along with the nature of the public health or safety nuisance existing upon or at the property.
- (4) The notice and order shall direct the owner or occupant to remove, abate or remedy the health or safety nuisance within a date certain, not to exceed 30 days from the receipt of the notice, unless a shorter time is required due to Department's further determination that imminent abatement is necessary to protect public health and safety.
- (5) The notice shall include owner's and occupant's right of appeal of Department's finding that a public health or safety nuisance exists on their property.
- (6) Department's finding that a public health or safety nuisance exists shall be appealable to the Surry County Board of Commissioners by owner or occupant upon written notice to the Clerk to the Board, 114 W. Atkins Street, P.O. Box 1467, Dobson, NC 27017 within 7 days of notice and order.

#### **§ 92.21 EXTENSION OF TIME TO PERFORM.**

Upon timely written request and for good cause, the owner and occupant may receive an extension of time to remedy the conditions. Any extension shall be written and signed by the Director, or Director's designee, and shall designate a time certain within which the nuisance conditions must be removed, remedied or abated.

#### **§ 92.22 FAILURE TO ACT.**

Should property owner or occupant fail to take action or appeal following written notice and order, and any extension granted, Director shall cause the dangerous and prejudicial conditions on owner or occupant's property be removed, abated or remedied by the County.

(A) The expense of the action to remove, abate or remedy shall be paid by the person in default, occupant and/or owner, and if not paid within a reasonable time, not to exceed sixty (60) days, shall be a lien upon the land of the premises where the nuisance arose, and shall be collected as unpaid taxes.

**§ 92.23 HEARING STANDARDS UPON APPEAL.**

Upon the appeal of a nuisance finding by Department, the Surry County Board of Commissioners at its next regular meeting shall receive evidence including (1) the written report prepared by Ordinance Enforcement Officer; (2) testimony from the Ordinance Enforcement Officer, Director or other witness; (3) expert testimony, if available; (4) photographic evidence, if relevant; and (5) testimony and documentary evidence from owner or occupant, if offered.

1. The Board shall deliberate to determine whether the described condition is dangerous or prejudicial to public health or safety. If the Board, following receipt of testimony and documentary evidence, determines by the greater weight of the evidence, that conditions described are dangerous or prejudicial to public health and safety of those in close proximity, the Board shall enter an order that the County take all necessary action to remove, abate or remedy those conditions found at hearing to be dangerous or prejudicial to the public health or safety pursuant to NCGS 153A-140. County's action shall take place following expiration of appellant's right to appeal.

- (A) The expense of the action to remove, abate or remedy shall be paid by the person in default, occupant and/or owner, and if not paid within a reasonable time, not to exceed sixty (60) days, shall be a lien upon the land of the premises where the nuisance arose, and shall be collected as unpaid taxes.

**§ 92.24 APPEAL TO GENERAL COURT OF JUSTICE.**

Any time within five (5) days of the Board's order finding that conditions on owner/occupant's premises are dangerous or prejudicial to the public health or safety and an order for removal, abatement or remedy has issued, owner/occupant may appeal for a writ of certiorari to the General Court of Justice with written notice of appeal mailed by first class mail to the Clerk to the Board at P.O. Box 1467, Dobson, NC 27017. The appeal may be delivered to the Board's Clerk at 114 W. Atkins Street, Dobson, NC 27017.

- (A) Upon appeal to the General Court of Justice, the Clerk to the Board shall cause to be produced a record of the Board's hearing in the form of a transcription together with each and every exhibit considered by the Board in its deliberation. Said record shall be delivered to the Clerk of Superior Court and a copy shall be provided to appellant.

**§ 92.99 PENALTY.**

- (A) Misdemeanor. Any person who violates this chapter, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within the specified time period, when ordered or notified to do so by Department,

shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by law. Each day of a violation constitutes a separate offense.

(B) Civil Remedies. In the event of a violation or threat of violation of this chapter, the County Attorney may take appropriate action to enforce this chapter, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct or abate such violations or threatened violations. The County Attorney enforcing provisions of this chapter may seek costs and expenditures, including staff time and attorneys' fees.

(C) Citations. When the Department issues a violation of this chapter, a citation may be issued to the person charged with the violation, or in the case of a corporation or municipality, to any officer or agent expressly or impliedly authorized to accept such service.