

AN ORDINANCE AMENDING THE NUISANCE ORDINANCE, CHAPTER 152 OF THE MILLS RIVER CODE OF ORDINANCES

WHEREAS, in September 2025, Town Council informally discussed the nuisance ordinance.

WHEREAS, on October 2, 2025 Council unanimously requested the Planning Board review the Town’s current nuisance ordinance for potential updates and changes. The Planning Board conducted an in-depth review of the nuisance ordinance at the October 7, November 4, and December 2, 2025 meetings and provided guidance to staff on recommended changes.

WHEREAS, At the December 11, 2025 Town Council meeting, Council directed staff to bring the nuisance ordinance item forward on the January 8, 2026 business meeting agenda. At this meeting, Council had high-level discussions on nuisance enforcement and potential ordinance changes that continued into the February 12, 2026 meeting. Council members and staff shared nuisance ordinance feedback with the Town Manager, which was incorporated into draft ordinance language presented to Town Council at the March 26, 2026 meeting. Minor revisions were made based on additional feedback from that meeting.

WHEREAS, the Mills River Town Council held a public hearing on May 14, 2026 to consider said ordinance amendment, and gave the public an opportunity to be heard.

WHEREAS, the Town Council does hereby ordain and enact into law the following amendments, Attachment A, to the Nuisance Ordinance, Chapter 152, of the Mills River Code of Ordinances, and briefly explained why Council considers the action taken to be reasonable and in the public interest.

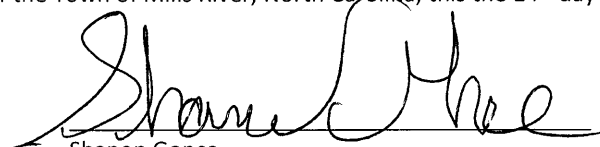
WHEREAS, this ordinance amendment aligns with Goal 5, to enhance community development, and Goal 6, to uphold excellence in community safety of the Mills River Strategic Plan.

WHEREAS, 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.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MILLS RIVER:

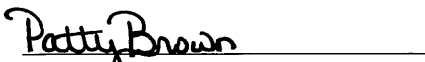
THAT, this ordinance amendment to Chapter 152, Nuisance Ordinance, of the Town of Mills River Code Ordinances is comprised of the following: amendments (see attached) and shall take effect and be effective at 12:01 AM on May 15, 2026, and shall be in full force and effect at all times thereafter until duly amended.

ADOPTED AND PASSED by the Town Council of the Town of Mills River, North Carolina, this the 14th day of May, 2026.



Shanon Gonce
Mayor

ATTEST By:



Patty Brown, CMC, NCCMC
Town Clerk



CHAPTER 152: NUISANCES

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GENERAL PROVISIONS

§ 152.01 PURPOSE AND OBJECTIVES.

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

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

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

(2) To provide town-wide standards for the abatement of public nuisances, including but not limited to solid waste, junked motor vehicles, and abandoned manufactured homes.

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

(4) To ensure proper actions are taken to abate public nuisances.

(Ord. 2019-02, passed 10-12-2019; Am. Ord. 2021-10, passed 5-13-2021; Am. Ord. ####-##, passed ##-##-####)

§ 152.02 JURISDICTION AND EXCEPTION.

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

(B) *Exception.* This chapter shall not regulate property being actively used as a bona-fide farm, as defined in this chapter, including facilities for the sale of agricultural products from the premises where produced.

(Ord. 2019-02, passed 10-12-2019; Am. Ord. ####-##, passed ##-##-####)

§ 152.03 DEFINITIONS.

(A) *Word interpretation.* Except as specifically defined herein, all words in this chapter have their customary dictionary definitions. For the purpose of this chapter, certain words or terms used are defined as follows:

(1) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include singular.

(2) The word SHALL is mandatory

(3) The word MAY is permissive

(4) The word Town shall mean the Town of Mills River, NC

(5) The word Town Council shall mean the Town Council of Mills River, North Carolina.

(6) The word Building includes the word Structure

(B) The following terms are defined for purposes of this chapter:

ABANDONED MANUFACTURED HOME. A manufactured home or mobile home that has not had legal power or was not properly connected to a permitted septic/sewer system and water supply in the most recent six (6) months, not to be interpreted to include a manufactured home stored or parked in accordance with a valid zoning compliance permit.

ABANDONED MOTOR VEHICLE. As defined in G.S. 160A-303, an abandoned motor vehicle is one that:

(1) Is left upon a public street, public right-of-way, or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on a public street, public right-of-way, or highway for longer than seven days or is determined by law enforcement to be a hazard to the motoring public; or

(3) Is left on property owned or operated by the Town for longer than 24 hours; or

ABATEMENT. The proper removal, repair, and/or containment of substances or materials hazardous to human health and/or the environment. Abatement is part of remediation.

ADMINISTRATIVE SEARCH WARRANT. An order signed by a court of competent jurisdiction authorizing a Town official to enter land or a structure for the purposes of inspection for compliance with the requirements of this chapter.

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

BONA-FIDE FARM. Any tract or tracts of land used for farm purposes as defined in G.S. 160D-903, including the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture as defined in G.S. 106-581.1. In addition, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona-fide farm purpose. Any of the following shall constitute sufficient evidence that the property is being used for bona-fide farm purposes: 1) A farm sales tax exemption certificate issued by the NC Department of Revenue; 2) A copy of the property tax listing showing the property is eligible for participation in the present use value tax deferral program pursuant to G.S. 105-277.3; 3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return; 4) A forest management plan; or 5) A Farm Service Agency (FSA) farm identification number.

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

CITATION. A formal notice to a person that he or she is charged with a violation of this chapter, and that a civil penalty is due.

CIVIL PENALTY. A fine or other financial penalty imposed by a court, the Town, or another governmental entity as restitution for violation of this ordinance or other wrongdoing.

CODE ENFORCEMENT OFFICER. A person designated by the Planning Director or Town Manager as an authorized delegate to enforce the provisions of this chapter.

COMPLAINT. A formal request or notification made to the Planning Department that specifies the alleged code violations and general location, submitted either anonymously or with contact information for the complainant, which becomes a public record.

COMPLAINANT. A person, persons, organization, corporation, or other entity that submits a formal complaint to the Planning Department or responsible party.

DEBRIS. The remains of something broken down or destroyed that can consist of rubble, wreckage, and/or discarded garbage, refuse, trash.

DECLARATION. A formal written statement authorized by the Planning Department or other responsible authority that officially declares a property in violation of this chapter.

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

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

JUNKED MOTOR VEHICLE. As defined in G.S. 160A-303.2 and G.S. 160A-303, a junked motor vehicle is one that:

- (1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) Is more than five (5) years old and worth less than \$500.00; or

(4) Does not display a current license plate.

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

MOTOR VEHICLE. A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

NOTICE OF VIOLATION. A formal notice indicating violation of this Ordinance.

NUISANCE VEHICLE. A vehicle on public or private property that is determined to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

(1) A breeding ground for mosquitos, other insects, mice, rats, or other vermin; or

(2) A point of heavy growth of weeds or other noxious vegetation that may encourage a vermin infestation; or

(3) A point of collection of pools or ponds of water; or

(4) A point of concentration of quantities of gasoline, oil or other flammable or hazardous materials as evidenced by odor or leaching into / staining of the ground; or

(5) One which has areas of confinement which cannot be operated from the inside, such as open trunks, hoods, etc.; or

(6) Located or situated to the extent of posing a risk of falling or turning over; or

(7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or

(8) One that has sharp parts thereon which are jagged or contain sharp edges of metal or glass, which could cause injury if accessible to the public.

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

OPEN SPACE. Open space means areas of properties or portions thereof that are open to the exterior, including building openings of residential dwelling units, such as carports and porches, and any other exterior portion of properties ordinarily exposed to the outside or public view, including front, side and rear yards.

OUTDOOR STORAGE. The outdoor holding of items, goods, merchandise, supplies, material, machinery, equipment, vehicles, or other items for potential future use, including any accumulation of junk, trash, or debris located outside that accumulates in any open space that may be visible from adjacent properties or an adjacent street.

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

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

PLANNING DEPARTMENT. The Town department responsible for enforcing this chapter.

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

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

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

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

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

SOLID WASTE. Solid waste is any unwanted or discarded solid material that results from human activities, including residential, commercial, industrial, and institutional sources. Solid waste includes junk, trash, and debris.

TRASH. Discarded, unwanted, or accumulated solid waste materials, including garbage, that consists mainly of decaying or putrescible matter and can negatively impact public health and safety when uncontained.

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

VACANT LOT. Property that has no established permitted use and/or any building or structure erected on the property.

VEHICLE RESTORATION PERMIT. A permit that allows persons to actively restore an unlicensed and unregistered vehicle. Vehicles may be stored openly outside for the duration of the approved permit.

(Ord. 2019-02, passed 10-12-2019; Am. Ord. 2021-10, passed 5-13-2021, Am. Ord ####-## ,passed ##-##-####)

§ 152.04 PROHIBITED NUISANCES.

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

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

(B) A publicly accessible and unsecured opening caused by an improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, or other similar publicly accessible conditions that could cause a person to fall and become injured.

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

(D) Significant outdoor storage of solid waste including junk, trash, or debris in which flies, mosquitoes, other disease-carrying insects, rodents, or other vermin can harbor or breed, subject to the provisions of §152.05.

(E) Junked motor vehicles stored outside, which may be in public view from adjacent properties or an adjacent street, without a current vehicle restoration permit and/or any abandoned manufactured home as defined, subject to the provisions of §152.06 and §152.07.

(F) Large breeding ground areas and significant infestations of mosquitoes, flies, fleas, cockroaches, lice, rats, mice, mosquito larvae, fly larvae, hookworm larvae or other insects, parasites or vermin in such a substantial manner that creates or contributes to a risk to public health and safety, if left unheeded.

(G) Use of an unpermitted recreational vehicle, temporary dwelling, or structure/accessory structure, as a permanent dwelling, defined as occupancy of a recreational vehicle or related unit for living quarters for more than two (2) weeks outside of a recreational vehicle park.

(H) Recreational vehicles, junked motor vehicles, or abandoned manufactured homes used to store solid waste within the vehicle or manufactured home interior.

(Ord. 2019-02, passed 10-12-2019; Am. Ord ####-## , passed ##-##-####)

§ 152.05 OUTDOOR STORAGE.

(A) Nonresidential Uses

(1) Outdoor storage by nonresidential uses in a front yard shall be limited to items that are designed and intended for permanent outdoor usage, retail display, and/or sale, shall not occupy more than one-third (1/3) of the front yard area, not be within 20 feet of the front property line, and not block or obstruct parking spaces or line of sight for an adjacent road.

(2) Outdoor storage of other items related to a business in all other areas shall conform to a maximum of one-third (1/3) of the side, or rear yard areas, shall not be within 15 feet of a property line, and not block or obstruct parking spaces or any line of sight for an adjacent road.

(3) Outdoor storage by a business is allowed, so long as it is reasonably related to the business, and the business is in compliance with other Town requirements. Use of land for outdoor storage of items not related to the business on the property is not permitted.

(4) Outdoor storage of solid waste, which is either in whole, or in part, wrecked, junked, deteriorated, worn out, dismantled, unusable, or inoperable shall only be allowed when completely enclosed within a building, or otherwise evenly placed, organized, and concealed by a solid opaque fence, all-weather covering, or other means so as not to be visible at the property line from abutting properties or from an adjacent street.

(5) Outdoor storage or accumulation of solid waste that poses a public health hazard such as to cause a fire hazard from combustible materials, accumulation of stagnant water, or infestation of mosquitoes or other disease carrying insects which are dangerous or prejudicial to the public health is prohibited.

(B) Residential Uses

(1) Outdoor storage of solid waste shall only be allowed on properties used for residential purposes if completely enclosed within a building, completely concealed by a solid opaque fence, or concealed by an all-weather covering so as not to be visible at the property line from abutting properties or an adjacent street.

(2) Outdoor storage or accumulation of solid waste that poses a public health hazard such as to cause a fire hazard, accumulation of stagnant water, or infestation of mosquitoes or other disease carrying insects which are dangerous or prejudicial to the public health is prohibited.

(C) Vacant Lots

(1) In no way shall solid waste be openly stored on a vacant lot as defined herein.

(D) Temporary Construction Sites

(1) The outdoor storage of solid waste on property where a construction project is actively in progress shall be permitted, provided that the project is authorized under a valid and lawfully issued zoning compliance permit, and the waste is not blown, scattered, or transferred to other adjacent properties due to lack of containment.

§ 152.06 OUTDOOR STORAGE OF JUNKED MOTOR VEHICLES

(A) Nonresidential Uses

(1) Outdoor storage of junked motor vehicles shall be permitted on the premises of a business operated in a lawful place and manner, if the vehicle(s) is necessary to the operation of the business.

(2) A junked motor vehicle shall not become a nuisance vehicle, as defined herein, unless stored in a lawful place and manner permitted by the Town.

(B) Residential Uses

(1) Each parcel of land occupied by a residential use within the Town may have one to three (1 – 3) junked motor vehicle(s) stored outside in the side or rear yard that are concealed from public view.

(2) The junked motor vehicle(s) shall be covered with a tarp, or other functional all-weather covering, or fully covered by a structure. A junked motor vehicle(s) shall not become a nuisance vehicle, as defined herein.

(3) If a residential property has more than three junked motor vehicles, the additional junked motor vehicles must be located in a garage, shop, accessory building, or other fully enclosed structure. This does not apply to any vehicle with a valid Vehicle Restoration Permit issued by the Town.

§ 152.07 VEHICLE RESTORATION PERMIT

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

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

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

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

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

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

(G) More than two (2) vehicle restoration permits shall not be issued to a single property for the purpose of evading the Town's nuisance ordinance standards applicable to the long-term outdoor storage of junked motor vehicles.

§ 152.08 DECLARED STATE OF EMERGENCY

(A) During a declared state of emergency due to a natural disaster, the Town Council may adopt a resolution to temporarily suspend enforcement of portions of this chapter.

§ 152.09 NUISANCE COMPLAINTS

(A) The Planning Department shall only investigate a potential public nuisance in response to receipt of a complaint or inquiry. Complaints may be submitted anonymously or may include the contact information for the complainant, which Town staff can use for follow-up. Any information contained in a complaint is considered a public record and may be disclosed to third parties.

(B) It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with the Planning Department in order to intimidate or harass any member of such department or any member of the public, or to otherwise hinder or interfere with any function of the Town. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.

(Ord. 2019-02, passed 10-12-2019; Am. Ord #####-## , passed ##-##-####)

NOISE CONTROL

§ 152.21 ESTABLISHMENT OF NOISE ORDINANCE.

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

(Ord. 2021-10, passed 5-13-2021)

§ 152.22 PROHIBITED NOISES.

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

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

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

- (a) Time of day;
- (b) Proximity to residential structures;
- (c) Whether the noise is recurrent, intermittent, or constant;

(d) The volume and intensity;

(e) Whether the noise has been enhanced in volume or range by any type of mechanical means;

(f) The nature and zoning of the area;

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

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

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

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

(Ord. 2021-10, passed 5-13-2021)

§ 152.23 EXCEPTIONS.

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

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

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

(3) Amplified sound emanating from religious institutions.

(B) This chapter shall not regulate property being actively used as a bona fide farm which is any tract or tracts of land used for farm purposes as defined in G.S. 160D-903, including the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture as defined in G.S. 106-581.1. (Ord. 2021-10, passed 5-13-2021)

§ 152.24 PERMITS FOR AMPLIFIED SOUND.

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

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

- (1) Property address;
- (2) Business name;
- (3) Property owner name and signature;
- (4) Responsible party (general manager, site manager, or similar);
- (5) Contact information for all parties.

(C) All applications shall be submitted to the Town of Mills River prior to producing amplified sound. Failure to comply with this requirement shall be grounds for denying the permit and/or enforcement action.

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

(Ord. 2021-10, passed 5-13-2021)

§ 152.25 NOISE COMPLAINTS.

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

(B) It shall be unlawful for any person to file a false report or to provide false information to any enforcement official involving any investigation of any reported violation of this subchapter. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.

(C) It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with law enforcement in order to intimidate or harass any member of such department or any animal owner, or to otherwise hinder or interfere with any function of the department of animal control. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.

(Ord. 2021-10, passed 5-13-2021)

§ 152.26 WARNINGS AND VIOLATIONS.

(A) Any producer of prohibited noise as defined in this subchapter that has been determined to be non-cooperative pursuant to this subchapter shall be subject to enhanced civil penalties.

(B) Violations shall result in the following:

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

(2) A second violation shall result in a fine not more than \$500.

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

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

(Ord. 2021-10, passed 5-13-2021)

ADMINISTRATION AND ENFORCEMENT

§ 152.91 CODE ENFORCEMENT OFFICER

(A) The Code Enforcement Officer is designated by the Planning Department Director or Town Manager as the authorized delegate responsible for enforcing the provisions of this chapter.

(Ord. #####-##, passed ##-##-####)

§ 152.92 GENERAL ADMINISTRATION

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

(A) Town ordinances. Except where otherwise specified, this chapter is subject to all provisions of the Mills River Town Code. The Planning Department shall be the department responsible for administration and enforcement of this chapter.

(B) Declaration as a public nuisance.

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

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

the North Carolina Department of Environmental Quality for administration and abatement.

(C) Modifications to or dismissal of the public nuisance declaration and civil penalties.

(1) The Code Enforcement Officer may modify conditions of the declaration or dismiss the declaration of a public nuisance and any associated civil penalties.

(2) Such modifications or dismissal shall occur only after the Code Enforcement Officer has confirmed the violation no longer exists or if there has been substantial progress and continuing improvement towards abating the nuisance.

(a) Once the property becomes in compliance with the written notice(s), or substantial improvements were made to remove the violations from the property, a Letter of Compliance will be issued.

(b) The property must be maintained in its condition to remain in compliance. Since the property owner was made aware of the nuisance prohibitions herein, no Second Notice of Violation will be issued for similar violations in the future. A Final Notice of Violation and Civil Citation will be issued immediately after the First Notice of Violation for future offenses on the same property already subject to a violation.

(3) The Code Enforcement Officer will base their criteria for determining levels of nuisance on the best health and safety information available at the time of the declaration and cannot be held liable for future discoveries.

(4) For good cause shown, the owner or occupant may request authorization from the Code Enforcement Officer for an extension of time to complete abatement activities. An extension may be granted if the extension does not increase the risk to public health or safety and is deemed appropriate.

(5) Extensions may not be granted unless the owner or occupant shows substantial progress and continuing improvement toward abating the nuisance. The first compliance extension shall be for a period of no longer than forty-five (45) days from the date of the compliance due date identified in the First Notice of Violation.

(6) Additional compliance extensions shall be at the discretion of the Code Enforcement Officer and shall only be considered if there has been substantial progress and continuing improvement towards abating the nuisance.

(a) These additional extensions shall be for periods of no longer than 30 days from the date of the compliance due date declared in the subsequently issued Notice of Violation.

(b) The determination of substantial progress and continuing improvement towards abatement of declared public nuisances shall be at the discretion of the Code Enforcement Officer.

152.93 ACCESS TO PERMISES AND RECORDS

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

(B) Interference. No person shall in any way interfere with or hinder the Code Enforcement Officer in the performance of their duties or refuse access to gather information necessary to ascertain compliance with this chapter or to investigate a complaint.

(Ord. 2019-02, passed 10-12-2019; Am. Ord. 2021-10, passed 5-13-2021)

§ 152.94 INVESTIGATION, NOTICE, AND RESPONSE TO A PUBLIC NUISANCE.

(A) Owner notification. Upon declaration of a public nuisance, the Code Enforcement Officer shall issue a First Notice of Violation with their determination and orders to abate the nuisance to the property owner, occupant, and property agent, if known and applicable to the situation.

(B) The Code Enforcement Officer shall provide the property owner, occupant, or tenant with informal written notice of the prohibited nuisance prior to issuing the first formal Notice of Violation, allowing adequate time to be notified and to prepare to address the violation, or appeal staff's determination. The informal written notice may take the form of a door hanger or courtesy warning letter.

(1) The informal written notice shall have a compliance due date not to exceed fifteen (15) days from the date the informal written notice is issued.

(2) The informal written notice shall be served in person, by regular mail, or by an officer authorized to serve the notice, and shall contain the following:

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

(b) Information identifying the nature of the public nuisance on the property and citation of the section(s) of the ordinance determined in violation.

(c) A compliance due date not to exceed fifteen (15) days from the date the notice is issued.

(d) The corrective action(s) required for abatement or remediation of the public nuisance.

(3) Informal notice shall not be required for public nuisances where the Code Enforcement Officer determines immediate abatement is necessary to protect public health and safety due to the hazardous nature of the violation.

(4) It is in the best interest of the Town and the public to have community-focused code enforcement, where violations may be remedied through informal means and communication before resulting in a formal notice of violation that could lead to civil penalties. The Code Enforcement Officer may attempt to contact the responsible parties informally to inform them of the violation and gain compliance with this ordinance, if reasonable and appropriate for the situation, and if there is no immediate threat to public health and safety.

(C) A recipient of any formal Notice of Violation must take all action required within the time period stated in the notice. This notice shall be served in person, by regular mail, or by an officer authorized to serve the notice and contain the following:

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

(2) Information identifying the nature of the public nuisance on the property and citation of the section(s) of the ordinance determined in violation.

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

(4) The corrective action(s) required for abatement or remediation of the public nuisance.

(5) A date for completion of the abatement not to exceed 30 days following the receipt of the formal notice unless a shorter time is required due to the Code Enforcement Officer's further determination that immediate abatement is necessary to protect public health and safety due to the hazardous nature of the violation. A First Notice of Violation letter may have up to a 45-day compliance period, while all subsequent formal Notice of Violation letters shall have up to a 30-day compliance period to address the prohibited nuisances.

(6) Information regarding a right of appeal as provided in §152.94 of this chapter and that, unless the threat to public is abated or removed in accordance with the terms of the notice, the Planning Department will have the public nuisance abated or removed at the expense of the owner under the provisions of this chapter and/or other applicable state or local law.

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

(E) Public notification. The Code Enforcement Officer shall provide information in writing about the public nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

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

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

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

(4) Local law enforcement officers.

(5) Henderson County Environmental (Public) Health.

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

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

(G) Abating a public nuisance. If the owner, property agent or occupant fails or neglects to comply with the requirements in the notice provided under division (C) of this section, then the Planning Department shall abate or remediate the public nuisance described in the notice. The Town will recoup such costs as necessary to abate the public nuisance as provided in §152.99 of this chapter.

(H) Vacating the public nuisance order. Upon verification and acceptable proof of proper abatement, remediation, repair, or removal at the site, the Code Enforcement Officer shall issue written compliance notice to those persons previously served notice under division (C) of this section that the public nuisance order is vacated due to compliance with the provisions of the ordinance. Notice shall also be provided, as applicable and appropriate, to those persons provided information under division (E) of this section.

(Ord. 2019-02, passed 10-12-2019; Am. Ord. 2021-10, passed 5-13-2021; Am. Ord ####-##, passed ##-##-####)

§ 152.95 APPEALS.

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

(B) Hearing. If any owner makes a written appeal request with the proper payment identified in the Town fee schedule, to the Board of Adjustment for an evidentiary hearing

to appeal a staff determination related to a nuisance, such hearing shall be held in accordance with the procedures as described in G.S. §160D-405.

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

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

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

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

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

(D) Notice of decision. The decision of the Board of Adjustment shall be issued in writing within fifteen (15) business days following the hearing. Unless otherwise provided by law, the decision of the Board of Adjustment shall constitute the final decision of the Town.

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

(Ord. 2019-02, passed 10-12-2019; Am. Ord. 2021-03, passed 3-25-2021; Am. Ord. 2021-10, passed 5-13-2021)

§ 152.99 VIOLATIONS, PENALTIES, COSTS, AND REIMBURSEMENTS.

(A) Civil citations and penalties. Unless otherwise specified in this chapter, any person who is an owner or occupant of property and who violates this chapter, or permits a prohibited nuisance to exist on the property under their control, or fails to take action to abate the existence of the violation(s) within the time specified in the notice(s) described in §152.92 and §152.94, when ordered or notified to do so by the Planning Department, shall be subject to a civil penalty of \$50. Each day's violation shall be treated as a separate finable offense, meaning civil penalties may accumulate at the rate of \$50 per day the property remains in violation of this ordinance.

(1) Civil penalties shall not accumulate to more than \$3,000 for a single property that is determined to be in violation of this ordinance, as declared in the notice described in §152.92 and §152.94. The \$3,000 civil penalty limit applies to each separate instance of an ordinance violation(s), occurring at a different point in time for that property.

(2) Payment of civil penalties shall be due within thirty (30) days upon receipt of the issued civil citation or related invoice for payment.

(3) All civil citations with fines shall be mailed by USPS certified mail, no return receipt requested.

(4) Failure to pay civil penalties within the prescribed period will result in a five percent (5%) late payment penalty added to the total amount due, or as specified in the Town's adopted fee schedule.

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

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

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

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

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

(Ord. 2019-02, passed 10-12-2019; Am. Ord. 2021-03, passed 3-25-2021; Am. Ord. 2021-10, passed 5-13-2021; Am. Ord #####-## , passed ##-##-####)