

PUBLIC NUISANCES ORDINANCE

Adding a new Town of Surry, Virginia Ordinance to be entitled “Public Nuisances”.

Now Therefore, Be It Ordained By the Town of Surry, as follows:

That a new Town of Surry, Va. Ordinance (to be entitled “Public Nuisances”) be adopted to read as follows: Public Nuisances Ordinance.

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1. FINDINGS AND PURPOSE

- 1-1 The Town Council of the Town of Surry does hereby find that it is necessary to provide for the abatement of conditions which are: offensive or annoying to the senses; detrimental to property values and community appearance; and obstruction to or interference with the comfortable enjoyment of adjacent property or premises; or hazardous or injurious to the health, safety or welfare of the general public in such ways to constitute a public nuisance; and, to provide standards to safeguard live, health and public welfare in keeping with the character of the Town by allowing for the maintenance of property or a premises for each of the following purposes:

- (1.) To safeguard the health, safety and welfare of the people by maintaining property or premises in good and appropriate condition;

- (2) To promote a sound and attractive community appearance; and,
- (3) To enhance the economic value of the community, and each area in it, through the regulation of the maintenance of property or premises.

1-2 Accordingly, the Town Council finds and declares that the purpose of this Ordinance is to:

- (1) Reduce the threat to health, safety, welfare, appearance and economic value due to the decline in property conditions(s) by lawfully delineating the circumstances under which such condition(s) may be considered illegal and/or abated; and , further finds that,
- (2) Abatement of such conditions(s) is in the best interest of the health, safety and welfare of the residents of the Town because maximum use and enjoyment of property or premises in proximity to one another depends upon maintenance of those properties or premises at or above the minimum standard.

2. DEFINITIONS:

2.1 For the purpose of this Ordinance, the following words and phrases are defined as follows:

(1) Abandoned, in addition to those definitions provided by state codes, local ordinances and case law, the term “abandoned” means and refers to any item which has ceased to be used for its designed and intended purpose. The following factors, among others, will be considered in determining whether or not an item has been abandoned:

- (a.) Present operability and functional utility;
- (b.) The date of last effective use;
- (c.) The condition of disrepair or damage;
- (d.) The last time an effort was made to repair or rehabilitate the item;
- (e.) The status of registration or licensing of the item;
- (f.) The age and degree of obsolescence;
- (g.) The cost of rehabilitation or repair of the item versus its market value; and,
- (h.) The nature of the area and location of the item.

(2) Abate means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the Town Council or its designated official in his/her judgment shall determine is necessary in the interest of the general health, safety and welfare of the Town.

(3) Attractive Nuisance means any condition, instrument or machine which is unsafe, unprotected and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned well, shafts, basements or excavations; abandoned refrigerators and motor vehicles; and

structurally unsound fences or structures; or, any lumber, trash, fences, debris or vegetation which may prove hazardous or dangerous to inquisitive minors.

(4) Dismantled means that from which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies the removal.

(5) Designated Town official means that Town officer or employee as may be designated in writing by the Town Council of the Town of Surry to enforce property or premises maintenance, zoning and other Town of Surry Code violations as authorized by the Code of Virginia.

(6) Inoperative means incapable of functioning or producing activity for mechanical or other reasons.

(7) Inoperative vehicle is defined as any automobile, truck, trailer, semi-trailer, recreational, or self-propelled vehicle that; is incapable of moving its own power; is disassembled in whole or in part; lacks a valid State of Virginia registration/license plate for a period of sixty (60) consecutive days or more; and/or does not with comply with the minimum safety requirements of the State motor vehicle laws.

(8) Lienholder means any person, as defined in this Ordinance, who has a recorded interest in real property, including mortgagee, beneficiary under a deed of trust, or holder of other recorded liens or claims of interest in real property.

(9) Nuisance means any public nuisance known at common law or in equity jurisprudence.

(10) Owner means the registered owner of a vehicle, the person(s) to whom property tax is assessed on real or personal property, as shown on the last equalized assessment roll of the Town, renter(s), lessor(s) and other occupants residing permanently or temporarily on property.

(11) Person means individual, partnership, joint venture, corporation, association, social club, fraternal organization, trust, estate, receiver, or any other entity.

(12) Premises means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, occupied or unoccupied, including adjacent streets, sidewalks, parkways and parking strips.

(13) Property means any real property including but not limited to land, lot, or parcel of land held by any owner, and shall include any alley, sidewalk, parkway or unimproved public easement abutting such real property, lot or parcel of land.

(14) Structure means anything constructed, built or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground, including fences, gates, garages,

carports, swimming and wading pools, patios, outdoor areas, paved areas, walks, tennis courts, and similar recreation areas.

(15) Weeds means an economically useless plant; a plant of unsightly appearance; a tree or shrub of low economic value that tends to grow freely; a form of vegetable life of exuberant growth and injurious effect. Weeds which are higher than 8" are hereby deemed to be unsightly.

(16) Wrecked means that which has outward manifestation or appearance of damage to parts and contents which are essential to operation.

3. PROPERTY MAINTENANCE – PUBLIC NUISANCES

- 3.1 It is hereby declared to be a public nuisance for any owner or other person in control of said property or premises to keep or maintain property, premises or rights-of-way in such a manner that any of the following conditions are found to exist:
- 3.2 Abandoned, dismantled, inoperable, and discarded objects, equipment or appliances such as, but not limited to water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on property or on sidewalks or streets which can be viewed from a public street or walkway, alley or other public property which items are readily accessible from such places, or which are stored on private property in violation of any other law or ordinance;
- 3-3 Discarded garbage, rubbish, refuse, or recyclable items which have not been recycled within thirty (30) days of being deposited on the property which are determined by a designated Town official to constitute a fire hazard or to be detrimental to human life, health or safety;
- 3-4 Lumber (excluding lumber for a construction project on the property with a valid permit), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of thirty (30) days and visible from a public street, walkway, alley or other public property;
- 3-5 Swimming pool, pond, spa, other body of water, or excavation which is abandoned, unattended, unsanitary, empty, which is not securely fenced, or which is determined by the designated Town official to be detrimental to life, health or safety;
- 3-6 Any premises which detrimentally impacts the surrounding purpose for which it is being used or is not secured or is improperly secured; and,
- 3-7 All wires and limbs of trees which are so close to the surface of a sidewalk, street, or road as to constitute a danger to pedestrians or vehicles
- 3-8 All unreasonable, unnecessary, and annoying vibrations and continuous sounds.

- 3-9 Any condition on a property which meets the requirements of subparagraph (1) and (2), below:
(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; and,
(2) Affects at the same time an entire community or neighborhood, or any considerable number of people, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

4. DERELICT/JUNK CAR NUISANCE

- 4-1 Abandoned, dismantled, inoperable, and wrecked inoperable vehicles are eyesores that adversely affect nearby property values and pose potential health risks associated with leak fluids and chemicals

- 4-2 Inoperable motor vehicles shall not be stored, nor shall they be allowed to stand, in any manner within any zoning district within the Town of Surry, Virginia, except as follows:

- (1) When the vehicle(s) is within a fully enclosed storage structure (such as a garage or barn)
- (2) When the vehicle(s) is covered and/or not visible from adjacent roads or grounds
- (3) When the vehicle(s) is located in a legally established and conforming wrecking or salvage yard

Note: One inoperable vehicle, however, may be temporarily stored outside a commercial garage or other storage facility for thirty (30) consecutive days or less to affect repair of said vehicle. If the subject vehicle is not subsequently repaired or properly licensed within the designated thirty (30) day it must be either removed from the property or stored inside a commercial garage or other approved storage facility.

- 4-3 Upon discovery by the Mayor or the designated Town official of improper storage of an inoperable vehicle(s) within the Town limits, a written notice will be delivered by Certified mail to the residence of the individual/individuals responsible for the violation. Delivery of this letter by Certified mail to the residence will constitute notification.

- 4-4 Once a property owner has been officially notified that he/she has an inoperable vehicle(s) located on his/her property and that the subject vehicle(s) is in violation of the provisions of this ordinance, the property owner will have no more than two (2) calendar weeks thirty (30) days to comply with the Town's directive by;
- (1) having the subject vehicle(s) in violation brought up to operable condition;
 - (2) having the vehicle(s) stored in the required manner; or
 - (3) having the vehicle(s) removed from the property and from within the Town limits

- 4-5 If a property owner requests a time extension to abate the derelict car nuisance violation, he/she must submit a request in writing to the Office of the Town Clerk for subsequent decision by the Town designated official. The resulting decision of the designated Town official relative to a specific nuisance violation may be appealed to the Town Council upon submission of a written request to the Town Clerk

- 4-6 Any such vehicle(s) that does/do not meet the above requirements and remains within the Town limits beyond any mandated timeframe will be adjudged to be the responsibility of the property owner on which the vehicle(s) is located.

5. TRASH RECEPTACLES/DUMPSTERS (12222009)

- 5-1 Due to their size and the volume of content deposited therein, trash receptacles/dumpsters are considered a potential source of litter upon public streets and grounds of the Town of Surry.
- 5-2 All trash receptacle/dumpsters shall be placed so as to have the least impact on abutting and neighboring properties.
- 5-3 No trash receptacle/dumpster shall be placed on a public way.
- 5-4 All trash receptacle/dumpsters shall be screened with fencing or plantings which create a visual barrier on all four (4) sides. A wall, solid wood fence, evergreen hedge, or any combination thereof shall be provided to obscure the trash receptacle/dumpsters. However, when the service side of the particular trash receptacle facility faces any property line, a wall or solid wood fence with gates or doors must be provided. If shrubs are used as the screening material, they shall be a minimum of 5 feet in height, spaced no farther than 4 feet apart. If a wall, solid wood fence is used as the screening material, its minimum height shall be 6 inches above the trash receptacle/dumpster.(12032009)
- 5-5 Commercial trash receptacle/dumpsters shall have working, tight-fitting, odor-proof and vermin-proof covers or doors attached and be covered at all times when not in use. The trash receptacle/dumpsters shall be painted, maintained in good repair, free from rust, free of objectionable odors and shall not leak liquids onto adjacent grounds.
- 5-6 Trash receptacle/dumpster lids shall remain closed except when it is necessary to deposit garbage or trash.
- 5-7 No solid waste shall be placed or allowed to accumulate outside a trash receptacle/dumpster.
- 5-8 Trash receptacle/dumpsters shall be emptied on a schedule sufficient to prevent over-filling.
- 5-9 Trash receptacle/dumpsters for construction/renovation purposes are exempt from this Ordinance.

6. RESPONSIBILITY FOR PROPERTY MAINTENANCE.

- 6-1 The owner, occupant, lessee, or tenant of any property within the Town of Surry shall be responsible for the maintenance of property with the Town of Surry shall be responsible for the maintenance of property and premises in a manner consistent with the provisions of the Ordinance and the Zoning Ordinance of the Town of Surry.

7. AUTHORITY OF ENFORCEMENT OFFICER.

- 7.1 Enforcement of this Ordinance may be accomplished by the designated Town official in any manner authorized by the Ordinance or by any other law, including but not limited to issuance of criminal citations, civil action and abatement.

8. ABATEMENT OF PUBLIC NUISANCES

- 8.1 A public Nuisance Notice is a citation issued by the Town of Surry Virginia for a property that has fallen out of compliance with the restrictions of this Ordinance.

- 8-2 The Town may choose to abate any public nuisance or violation of the Town of Surry Ordinances

- 8-3 The designated Town official may enter any property or premises at all times to perform any duty imposed upon him/her by this Ordinance whenever the designated Town official has cause to believe a violation of provisions of this Ordinance is occurring, provided that :

(1) The designated Town official shall present proper credentials, state the reason for entry and request entry from the owner or occupant.

(a) If entry is denied, he/she may seek a court ordered inspection warrant if cause exists pursuant to the applicable Code of Virginia authorization.

(b) If entry is denied, the designated Town official shall have recourse to every remedy provided by law to secure entry.

(2) The designated Town official shall make a reasonable effort to locate the owner of unoccupied property or premises, inform the owner of the reasons for entry and request entry.

(3) The designated Town official shall not enter any property or premises in the absence of permission to enter, unless an inspection warrant has been issued by a court of competent jurisdiction.

- 8-4 Upon receipt of a Nuisance Notice, a property owner will be given thirty (30) days to abate the identified violation.

- 8-5 If a property owner requests a time extension to abate a nuisance violation, he/she must first take action to abate a minimum of fifty per cent (50%) of the nuisance violation.

- 8-6 A minimum of three (3) days before the nuisance abatement re-inspection is due; the property owner must contact the Town Clerk or designated Town official and offer explanation as to why a time extension is requested.

- 8-7 Upon discovery by the Mayor or the designated Town official of improper storage of an inoperable vehicle(s) within the Town limits, a written notice will be delivered by Certified mail to the residence of the individual/individuals responsible for the violation. Delivery of this letter by Certified mail to the residence will constitute notification.

- 8-8 Once a property owner has been officially notified that he/she has an inoperable vehicle(s) located on his/her property and that the subject vehicle(s), is in

violation of the provisions of this ordinance, the property owner will have no more than two (2) calendar weeks thirty (30) days to comply with the Town's directive by;

- (1) having the subject vehicle(s) in violation brought up to operable condition;
- (2) having the vehicle(s) stored in the required manner; or
- (3) having the vehicle(s) removed from the property and from within the Town limits.

8-9 If a property owner requests a time extension to abate the derelict car nuisance violation, he/she must submit a request in writing the Office of the Town Clerk for subsequent decision by the Town designated official. The resulting decision of the designated Town official relative to a specific nuisance violation may be appealed to the Town Council upon submission of a written request to the Town Clerk.

9. NO DUTY TO ENFORCE

9-1 Nothing in this Ordinance shall be construed as requiring the Town to enforce the prohibitions in this Ordinance against all or any properties which may violate the Ordinance. In the Town's prosecutorial discretion, and as the Town's resources permit, this Ordinance may be enforced only as to a limited number of problem properties per year. Nothing in this Ordinance or the absence of any similar provisions from any other town law shall be construed to impose a duty upon the Town to enforce such other provision of law.

10. CRIMINAL OR CIVIL PENALTY FOR VIOLATION

10.1 Pursuant to the Town's prosecutorial discretion, the Town may enforce violations of the provisions of the Ordinance as criminal, civil or abatement actions.

11. PENALTY (Taken Verbatim from Local Government Ordinance)

11-1. Any person, firm, or corporation, whether as principal, agent, employed, or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to fifty (\$50.00) dollars for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within twelve (12) months of the first violation shall not exceed town hundred (\$200) dollars. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed the total or three thousand (\$3000) dollars in a twelve (12) month period.

11-2 In the event three (3) civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a twenty four (24) month period, such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

11-3 The Town may petition the State of Virginia District Court to impose, assess and recover such sums. The civil penalty provided in this Ordinance excludes inspection costs and cleanup or abatement costs; is cumulative and not exclusive; and, shall be in addition to all other remedies available to the Town under state law and local ordinances.

12. EMERGENCY CLEANUP OR ABATEMENT

12-1 In order to enforce the provisions of this Ordinance, when the Town Council or its designated Town official find and determine that the severity of the violation warrants immediate action, he/she may secure the means to clean up or abate violation thereof. The costs of such cleanup or abatement may be recovered by the Town in a civil action. Such emergency cleanup or abatement will not relieve the person of further action which may be taken by the Town council or its duly authorized agents and representatives, including but not limited to, liability for any violations of this Ordinance or any other applicable provisions of state law and local ordinances.

13. COSTS OF ABATEMENT

13-1 In any civil, criminal or administrative appeal, hearing or action commenced by the Town under this Ordinance, the Town shall be entitled to recover from the defendant of such action reasonable attorney's fees, costs of suit, and any other costs of enforcement, including but not limited to, inspection costs and cleanup or abatement costs.

13-2 At the end of any thirty (30) day period to abate an issued nuisance violation, if the affected property owner has not made any time extension arrangements with the Town Clerk or other designated Town official, an automatic fifty dollar (\$50) penalty will be assessed against the property owner.

13-3 If the Town subsequently hires an independent contractor to bring the subject property back into compliance with the provisions of this ordinance, the affected property owner will be responsible for the fifty dollar (\$50) fine, PLUS any associated contractor cleaning fees.

13-4 If a property owner abates an assigned violation notice after a designated 15 day abatement period and before a contractor arrives to initiate action to abate the subject nuisance violation, the property owner will be responsible for the assigned fifty dollar (\$50) fine and any related fee(s) charged by the contractor.

14. NON-EMERGENCY ABATEMENT BY THE TOWN.

14-1 Following determination by the Town Council that a nuisance shall be abated by the Town, the notices required by the applicable Code of Virginia regulations, shall be given and a hearing shall be conducted as provided therein. Following abatement, the costs of abatement include those authorized by this Ordinance shall be confirmed by the Town Council as provided in the Code of Virginia and thereafter placed as a lien on the subject property. The proceeding provided by the Code of Virginia is not exclusive. The Town may abate by all other legal means available to it.

15. CONCLUSIVE NOTICE

15-1 Mailing of notice of any hearing or order under this Ordinance to the owners of the real property concerned as the owners' names and addresses are shown on the last equalized roll upon which Town taxes are collected shall be conclusively deemed to be the proper persons and addresses for mailing the resolution, and the failure of any or all of the addressees to receive the notice shall not invalidate any of the proceedings. Further, the posting of notice of a hearing or order pursuant to this Ordinance shall be conclusively deemed to be adequate notice to any and all occupants, users or possessors of the property or its contents, and the failure of any such occupant, user or possessor to see, read, understand or otherwise receive the notice shall not invalidate any of the proceedings."

16. SEVERABILITY

16-1 If any provision, clause, sentence, paragraph, or phrase of this Ordinance or the application thereof to any person or circumstances is held, for any reason by a court of competent jurisdiction, to be invalid or unconstitutional, such decision shall not affect the validity of other provisions or applications of the provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable. The Town Council of the Town of Surry declares that it would have passed this Ordinance, and every section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases were to be held invalid or unconstitutional by such court.

17. SAVINGS CLAUSE

17-1 The changes provided for in this Ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective day of this Ordinance; nor shall it affect any prosecution, suit or proceedings pending or any judgment rendered prior to the effective day of this Ordinance.

Public Nuisance Ordinance passed March 13th, 2007

Section 5 Dumpster enclosure passed Dec. 22, 2009

