



Proposed Ordinance; Town of Landis, North Carolina

An Ordinance Providing for the Prevention and Abatement of Public Nuisances.

WHEREAS the Town of Landis has the authority, pursuant to North Carolina General Statutes §160A-174 and §160A-175 to make and enforce ordinances and pursuant to North Carolina General Statute §160A-193 to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety; and

WHEREAS, the Board of Aldermen has determined that the excessive growth of grass and weeds, the accumulation of offensive animal and vegetable matter, the accumulation of refuse, junk, litter, deteriorated building materials, deteriorated furniture, and products with jagged metal or glass edges, deteriorated fences, deteriorated buildings, the open storage of ice boxes, refrigerators, stoves or any similar items on any lot or property within the corporate limits of the Town creates unsightliness, infestation of rodents, birds, snakes, insects, or other animals or fowl, causes or threatens to cause a nuisance dangerous and prejudicial to the public health or safety, and decreases property values within the community; and

WHEREAS, the Board of Alderman has determined that the excessive growth of grass and weeds, the accumulation of offensive animal and vegetable matter, the accumulation of refuse, junk, litter, deteriorated building materials, deteriorated furniture, and products with jagged metal or glass edges, deteriorated fences, deteriorated buildings, the open storage of ice boxes, refrigerators, stoves or any similar items on any lot or property within the corporate limits of the Town constitutes a public nuisance and seeks to abate such a nuisance with the authority granted to municipalities under North Carolina General Statute §160A-193.

NOW THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Landis, North Carolina that:

TITLE IX, Chapter 94, Sections §94.01 – §94.05 and Sections §94.20 - §94.24 of the Code of Ordinances of the Town of Landis, North Carolina is hereby repealed in its entirety and the following substituted in lieu thereof:

Section §94.01 - Nuisances enumerated.

The existence of any of the following conditions on any vacant lot or other parcel of land in open places (for purposes of this chapter, "open places" are defined as areas of properties or portions thereof that are open to the exterior, including building openings of residential dwelling units, such as carports or porches, and any other exterior portions of properties ordinarily exposed to the outside and/or public view, including front, side and rear yards) within the corporate limits is hereby prohibited and is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (1) The uncontrolled growth of noxious weeds or grass to a height of eight (8) inches or greater or which otherwise causes or threatens to cause a hazard detrimental to the public health or safety. For the purposes of this subsection, height shall be measured from the ground at the base of a plant to the top of the freestanding plant;
- (2) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes or vermin of any kind which are or may be dangerous or prejudicial to the public health;
- (3) Any accumulation of rubbish, trash or junk causing or threatening to cause a fire hazard or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes or vermin of any kind which are or may be dangerous or prejudicial to the public health;
- (4) Any litter which is scattered, cast, thrown, blown, placed, swept, or deposited anywhere so as to accumulate on any property in open places. The owner and occupant of any dwelling unit or other nonresidential premises shall keep exterior premises clean of litter, including, but not limited to, glass, bottles, waste paper, wrapping paper, paper napkins, cartons, package containers, bags of trash, and other used or waste materials intentionally or unintentionally scattered, discarded, thrown or left on such premises, and to prevent same from drifting or blowing to adjoining premises by removing such waste or ensuring that same is placed in approved refuse containers (garbage or recycling containers) and/or locations for collection.

- (5) Any concentration of unusable building materials, including, but not limited to, concrete, steel, masonry or any construction and demolition debris which due to deterioration or age are no longer suitable for building construction, alterations or repair;
- (6) Any worn-out, deteriorated or abandoned household or office furniture, appliances or other similar products of any kind;
- (7) Any product with jagged edges of metal or glass;
- (8) Any junk or scrap materials, waste materials, trash, garbage, oily rags, barrels, cans, papers, bricks or brickbats and other litter, refuse, rubbish, combustible materials, or other solid wastes which are scattered, cast, placed or deposited in open places. Junk materials may be stored in accordance with the following:
 - (i) Storage of junk shall only be allowed on any properties used for non-residential purposes if in compliance with all other town codes, or if not addressed by a town code, completely enclosed within a building; and
 - (ii) Storage of junk shall only be allowed on any property used for residential purposes if completely stored in an enclosed building or limited to one hundred (100) square feet in area and completely concealed by a solid fence so as not to be visible from abutting properties or public streets; and
 - (iii) Whether stored on a residential or nonresidential property such storage of junk shall be maintained in such a manner so as to prevent overgrown grass or weeds or an infestation of wild animals, reptiles and rodents;

For the purposes of this chapter, “junk or scrap materials” means pieces or fragments of metal, wood, glass, masonry, plastic, textiles, rope, leather, rubber, paper, or any substance, that formerly were part of the construction, including construction and demolition debris, of some useful object or thing or that consist of the excess resulting from the creation of some useful object or thing. Junk and scrap materials also include objects or things, including, but not limited to, machines, tools, equipment, hardware, furniture, appliances, automobile

parts, and similar items that are no longer in serviceable condition or are valuable only as raw material for reprocessing;

- (9) All fences, retaining walls or similar structures that are not firmly anchored to the ground, maintained in good structural condition and free of deterioration. Wooden or other fence features subject to deterioration or weathering shall be properly maintained to retard deterioration or provide protection from the weather. Deteriorated features shall be replaced, repaired or completely removed. Grass, weeds and other vegetation shall be mowed around said fences and structures so as to keep the areas free of species of weeds or plant growth which are noxious or detrimental to health;
- (10) Any accessory building or structure that is too small to be regulated by the North Carolina State Building Code that has become so deteriorated or dilapidated so as to constitute a public nuisance;
- (11) Any other building or structure that is regulated by the North Carolina State Building Code that has become so deteriorated or dilapidated so as to constitute a public nuisance. The procedure set forth in this section shall be in addition to any other remedies that may now or hereafter exist under the Town of Landis Code of Ordinances, North Carolina General Statutes or other provisions of law for the abatement of public nuisances or the abatement of any building or structure that is regulated by the North Carolina State Building Code that has become so deteriorated or dilapidated so as to constitute a public nuisance;
- (12) Usable building materials, unless
- (i) permitted as an authorized storage under this code; or
 - (ii) if stored on any residential lot where construction has stopped or never commenced for a period of one (1) year and there is not a current, valid outstanding building permit issued for construction on the residential lot, such storage is inside a completely enclosed building (if otherwise permitted on the lot) or placed in the rear of the lot and stored in accordance with subsection (8) of this section;

(13) Construction fill materials, unless such materials are:

- (i) stored in a level, safe manner for a period of time not to exceed twelve (12) months, or
- (ii) approved by the code enforcement officer as a landscape feature evidenced by a comprehensive landscape plan showing such features for legitimate landscape purposes as part of the total development of the lot;

(14) Firewood, except when such storage is neither in excess of a total area of one hundred (100) square feet nor stacked to a height more than six (6) feet above the ground; and

(15) The open storage of any abandoned icebox, refrigerator, stove, glass, building material, building rubbish or similar items.

(16) Any condition detrimental to the public health which violates the rules and regulations of the county health department.

Section §94.02 - Complaint and investigation.

The code enforcement officer may investigate a violation pursuant to:

- 1) His or her own observations of a condition described in section §94.01,
- 2) The receipt of a written complaint, signed by two or more persons who own, lease or reside upon properties immediately adjacent to the parcel alleged to be in violation of section §94.01, provided that each complainant represents a different adjacent parcel.

Section §94.03 - Notice to abate nuisance.

Upon a determination that such conditions constituting a public nuisance exist, the code enforcement officer shall notify, in writing, the owner and, if possible, the occupant or person in possession of the premises in question of the conditions constituting such public nuisance and shall order the prompt abatement thereof within ten (10) days from the receipt of such written notice and informing the responsible persons of the possible consequences of failing to comply. The notice shall be personally served by a town employee or served by first class mail and certified mail or registered mail to the last known address of the owner as indicated by the county tax records or posted in a conspicuous place at the vacant lot or other parcel of land in violation. If the notice is sent by first class mail and certified mail or registered mail, service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within (10) days after mailing. If the occupant of the property is someone other than the owner, in addition to serving the owner, the town shall attempt to serve the occupant in the same manner as provided herein for service on the owner.

Section §94.04 - Appeal hearing; abatement procedure.

- (1) *Request for Appeal Hearing.* Within seven days from receipt of the notice provided for in section §94.03, the owner, occupant or person in possession of the premises may request, in writing, a hearing before the Town Manager and the Town Code Enforcement Officer whose investigation and findings resulted in the initial abatement order. The Town Manager shall fix a time for the hearing, and the initial abatement order shall be temporarily suspended pending a hearing. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the abatement order. Upon completion of the hearing, the Town Manager shall consider the evidence before them and shall either revoke the initial order, issue a final order which differs from the initial order, or reinstate the initial order as a final abatement order.

- (2) *Abatement Procedure.* Upon the occurrence of the following conditions, the Town Code Enforcement Officer or other responsible Town official or designee shall cause that condition to be removed or otherwise remedied by having Town employees or independent contractors to go upon those premises and remove or otherwise abate the identified nuisance:
 - (i) A hearing is requested and held under section §94.04 resulting in either a final order with modifications or the reinstatement of the initial order as a final order, and such order is not complied with; or

- (ii) No hearing is requested or held, and the person having been ordered to abate that public nuisance fails, neglects, or refuses to abate or remove the condition constituting the nuisance within 10 days from receipt of the order.

- (iii) That the expenses incurred by the town in connection with the actions described in this section, if not paid by the owner, shall become a lien upon the land, as provided in section §94.07.

Notice shall be personally served by a town employee or served by first class mail and certified mail or registered mail to the last known address of the owner as indicated by the county tax records or posted in a conspicuous place at the vacant lot or other parcel of land in violation. If the notice is sent by first class mail and certified mail or registered mail, service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within (10) days after mailing. If the code enforcement officer has reason to believe that owner is someone other than the person listed in the county tax records or that the owner cannot be reached at the address provided in the county tax records, then the officer shall use reasonable diligence to locate the owner. If the occupant of the property is someone other than the owner, in addition to serving the owner, the town shall attempt to serve the occupant in the same manner as provided herein for service on the owner. Notice served in compliance with this subsection shall be presumed to be valid and sufficient.

(3) *Hearing Procedures.* At the hearing held pursuant to this section, the code enforcement officer shall be responsible for presenting sufficient evidence to the Town Manager to substantiate a finding that a condition exists that is dangerous or prejudicial to the public health or safety. The Town Manager may consider all reliable evidence and need not be bound by the strict rules of evidence applicable to courts of law. The owner and occupant may be represented by counsel and may present evidence. All parties may cross-examine adverse witnesses. At the conclusion of the hearing, the Town Manager shall make findings of fact, state his or her own conclusions, and enter an appropriate order. The Town Manager's findings of fact, conclusions, and order shall be reduced to writing and a copy sent by first class and certified mail or personally delivered to the owner within three (3) days following the hearing.

(4) *Order.* If the Town Manager concludes that a situation or condition exists that is dangerous or prejudicial to the public health or safety, he or she may:

- (i) Order appropriate town staff or contractors to summarily remove, abate, or remedy everything so found and to assess the cost of this action against the owner in accordance with sections §94.05 through §94.07; or
- (ii) Order the owner to correct the situation within a specified time period not more than sixty (60) days or such other period as the Town Manager deems appropriate and reasonable, and if the owner fails to act within the prescribed time period, order town staff or contractors to abate, correct, or remedy the offending condition and to assess the cost of this action against the owner in accordance with sections §94.05 through §94.07.

(5) *Emergencies.* Nothing in this section shall require notice and a hearing before a public nuisance may be abated where the nuisance constitutes an imminent danger to the public health and safety, creating an emergency necessitating immediate action. In such cases, the town shall provide as much notice of the town's intended action to the property owner and occupant as is reasonable under the circumstances.

Section §94.05 - Owner may request city to remove; costs.

Any person who has been ordered to abate a public nuisance may within the time allowed by this article request the town in writing to remove such condition, the cost of which shall be paid by the person making such request.

Section §94.06 - Cost incurred by owner.

The actual cost incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner of such lot or parcel of land and it shall be the duty of the town to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within thirty (30) days from the receipt thereof.

Section §94.07 - Charges become a lien.

- (1) If charges for the removal or abatement of a public nuisance are not paid within thirty (30) days after the receipt of a statement of charges as provided for in section §94.06, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this section shall

have the same priority and be collected as unpaid ad valorem taxes. A lien established pursuant to this subsection shall remain valid irrespective of who caused the public nuisance.

- (2) The expense of the action is also a lien on any other real property owned by the person in default within the town limits or within one mile of the town limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

Section §94.08 - Procedure is alternative to other authorized procedures; chronic violators.

- (1) The procedure set forth in this section shall be in addition to any other remedies that may now or hereafter exist under the Town of Landis Code of Ordinances, North Carolina General Statutes or other provisions of law for the abatement of public nuisances and this ordinance shall not prevent the Town of Landis from proceeding in any criminal action against any person, firm or corporation violating the provisions of this ordinance as provided in North Carolina General Statute 14-4.
- (2) The town may notify a chronic violator of this article that, if the violator's property is found to be in violation of this article, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected. For the purposes of this subsection, a "chronic violator" is a person who owns property whereupon, in the previous calendar year, the town gave notice of violation at least three times under any provision of this article.