

## Section 18 - OFFENSES

**modified**

- **18.1 - ABANDONED VEHICLES**
- **Declaration of purpose.**

Whereas, the Town of Biscoe is authorized by G.S. 160A-193, G.S. 160A-303 and G.S. 160A-303.2 to regulate, restrain or prohibit abandoned, nuisance and junked motor vehicles on public and private property within the Town's ordinance-making jurisdiction; and

Whereas, the Town of Biscoe finds it necessary and desirable to promote or enhance:

- (1) The quality of urban attractiveness and aesthetic appearance of the Town;
- (2) The protection of property values throughout the Town;
- (3) The preservation of the liveability and attractiveness of neighborhoods;
- (4) The promotion of tourism, conventions, and other opportunities for economic development for the Town;
- (5) The attractiveness of the Town's thoroughfares and commercial roads which present the primary, public visibility to visitors and to passers-by of the Town; and
- (6) The promotion of the comfort, happiness, and emotional stability of occupants of property in the vicinity of junked motor vehicles.

- **18.1.2 - Administration.**

The Police Department and Town Manager of the Town shall be responsible for the administration and enforcement of this chapter. The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be "abandoned" on the public streets and highways within the Town, and on property owned by the Town. The Town Manager shall be responsible for administering the removal and disposition of "abandoned," "nuisance" or "junked motor vehicles" located on private property. The Town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this chapter and applicable state laws. Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Town Police Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

• **Sec. 18.1.3. - Definitions.**

For purposes of this chapter, certain words and terms are defined as herein indicated:

- (a) *Abandoned vehicle.* As authorized and defined in G.S. 160A-303, an abandoned motor vehicle is one that:
- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking; or
  - (2) Is left on a public street or highway for longer than seven (7) days; or
  - (3) Is left on property owned or operated by the Town for longer than twenty-four (24) hours; or
  - (4) Is left on private property without the consent of the owner, occupant or lessee thereof, for longer than two (2) hours.
- (b) *Authorizing official.* The supervisory employee of the Police Department or the Town Manager, respectively, designated to authorize the removal of the vehicles under the provisions of this chapter.
- (c) *Motor vehicle or vehicle.* All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.
- (d) *Junked motor vehicle.* As authorized and defined in G.S. 160A-303.2 the term, junked motor vehicle means a vehicle that does not display a current license plate lawfully upon that vehicle and that:
- (1) Is partially dismantled or wrecked; or
  - (2) Cannot be self propelled or moved in the manner in which is originally was intended to move; or
  - (3) Is more than five (5) years old and appears to be worth less than one hundred dollars (\$100.00).
- (e) *Nuisance vehicle.* A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:
- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests; or
  - (2) A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; 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 explosive materials as evidenced by odor; or
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.; or
- (6) So situated or located that there is danger of it 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 which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town.

• **Sec. 18.1.4. - Abandoned vehicle unlawful; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.
- (b) Upon investigation, proper authorizing officials of the Town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

• **Sec. 18.1.5. - Nuisance vehicle unlawful; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (b) Upon investigation, the Town Manager may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined above, and order the vehicle removed.

• **Sec. 18.1.6. - Junked motor vehicle regulated; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(b)

Subject to the provisions of subsection (e), upon investigation, the Town Manager may order the removal of a junked motor vehicle as defined in this chapter after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:

(1)

Protection of property values;

(2)

Promotion of tourism and other economic development opportunities;

(3)

Indirect protection of public health and safety;

(4)

Preservation of the character and integrity of the community; and

(5)

Promotion of the comfort, happiness and emotional stability of area residents.

- **Sec. 18.1.7. - Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements.**

Except as set forth in Section 7 below, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupancy of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to which mailed, and the date mailed. If such names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the Town on a specified date (no sooner than seven (7) days after the notice is affixed). The notice shall state that the vehicle will be removed by the Town on a specified date, no sooner than seven days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the Town Council in writing, heard at the next regularly scheduled meeting of the Town Council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

- **Sec. 18.1.8. - Exceptions to prior notice requirement.**

The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice includes:

(a)

*Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the Town hereby determines that immediate removal of such vehicles may be warranted when they are:

(1)

Obstructing traffic;

(2)

Parked in violation of an ordinance prohibiting or restricting parking;

(3)

Parked in a no-stopping or standing zone;

(4)

Parked in loading zones;

(5)

Parked in bus zone; or

(6)

Parked in violation of temporary parking restrictions imposed under code sections.

(b)

*Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicles left on city-owned property other than the streets and highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

- **Sec. 18.1.9. - Removal of vehicle; post-towing notice requirements.**

Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the Town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the Town. Whenever such a vehicle is removed, the authorizing Town official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

(1)

The description of the removed vehicle;

(2)

The location where the vehicle is stored;

- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

The Town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in subsections (1) through (5) above, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his agent.

If the vehicle is registered in North Carolina, notice shall be given within twenty-four (24) hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within seventy-two (72) hours from the removal of the vehicle.

Whenever an abandoned, nuisance or junked motor vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing Town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (1) through (5) above.

**Sec. 18.1.10. - Right to probable cause hearing before sale or final disposition of vehicle.**

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the county magistrate designated by the Chief District Court Judge to receive such hearing requests. The magistrate will set the hearing within seventy-two (72) hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. 20-222, as amended.

• **Sec. 18.1.11. - Redemption of vehicle during proceedings.**

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of such fees and charges to the Town truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violation of this Ordinance.

• **Sec. 18.1.12. - Sale and disposition of unclaimed vehicle.**

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the Town and in accordance with Article 1 of Chapter 44A of the North Carolina General Statutes.

- **Sec. 18.1.13. - Conditions on removal of vehicles from private property.**

As a general policy, the Town will not remove a vehicle from private property if the owner, occupant or lessee of such property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the Town from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Manager. The Town may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the Town against any loss, expenses or liability because of the removal, storage, or sale thereof.

- **Sec. 18.1.14. - Protection against criminal or civil liability.**

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance or junked motor vehicle, for disposing of such vehicle as provided in this chapter.

- **Sec. 18.1.15. - Exceptions.**

Nothing in this chapter shall apply to any vehicle: (1) which is located in a bona fide "automobile graveyard" or "junkyard" as defined in N.C.G.S. 136-143, in accordance with the "Junkyard Control Act", N.C.G.S. 136-141, et seq.; (2) which is an enclosed building; (3) which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or (4) which is an appropriate storage place or depositor maintained in a lawful place and manner by the Town.

- **Sec. 18.1.16. - Unlawful removal of impounded vehicle.**

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the Town any vehicle which has been impounded pursuant to the provisions of this code unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

- **CHAPTER 18.2 - ANIMALS**

- **Secs. 18.2.1 - Declaration of purpose.**

Whereas, the Town of Biscoe is authorized to regulate or prohibit the keeping of certain types of animals within the corporate limits of the Town.

- **Sec. 18.2.2 - Definitions.**

For purposes of this chapter, certain words and terms are defined as herein included:

*Adequate shelter.* An enclosure of at least three (3) sides, a roof and a ground surface. The enclosure shall be ventilated and have sufficient room for the animal(s) to move about freely and lie comfortably.

*Animal.* Excluding fish, any nonhuman, vertebrate species, domestic or nondomestic.

*Animal at large.* Any animal off the premises of its owner and not under sufficient physical restraint, such as a leash, cage, bridle, or similarly effective device to allow the animal to be controlled.

*Animal under restraint.* Any animal confined within a vehicle, confined within the real property limits of its owner, or secured by a leash or lead.

*Domestic animal.* Any animal that is neither livestock nor exotic by definition, domesticated by man as to live and breed in a tame condition.

*Exotic animal.* Any wild animal not customarily confined or cultivated by humans for domestic or commercial purposes.

*Exotic animal, dangerous.* Any exotic animal, which demonstrates actions that would constitute a danger to any person, domestic livestock, other domestic animals, or property.

(1)

Characteristics used to determine the dangerous nature of an exotic animal include:

(i)

Disposition;

(ii)

Physical or inherent characteristics;

(iii)

Size;

(iv)

Behavior;

(v)

Propensity to act without provocation.

*Livestock.* Cattle, swine, sheep, goats, and members of the equidae family of mammals such as horses, mules, and donkeys.

*Owner.* Any person, group of persons, firm, partnership or corporation owning, keeping, having charge of, sheltering, feeding, harboring, possessing, or taking care of any animal for more than five (5) days.

*Owner's real property.* Any real property owned or leased by the owner of the animal(s). This property does not include any public right-of-way or a common area of condominium, apartment complex, or townhouse development.

*Pet.* Animals kept inside the primary or accessory dwelling unit entirely for pleasure rather than utility.

*Vicious animal.* Any animal, which constitutes a physical threat to human beings or other animals by virtue of the occurrence and severity of unprovoked attacks of such number and severity as to cause property damage or physical injury. These animals are prohibited within the Town limits.



- **Sec. 18.2.3. - Animals at large.**

- (a) No animal shall be left at large. Animals shall be under restraint at all times.
- (b) It shall be unlawful for any owner to permit an animal to be at large. Animals found to be at large will be confiscated.
- (c) An owner may lawfully permit an animal which is not dangerous to be at large in the course of a show, obedience school, tracking tests, field training, or other events sanctioned or supervised by a recognized organization. Hunting dogs may be at large in the course of hunting under the control of the owner.

- **Sec. 18.2.4 - Tethering prohibited.**

- (a) Tethering is defined as a means of tying or fastening a dog outdoors on a rope, chain or other line for the purpose of restraint. Tethering does not include restraint of a dog on an attended leash.
- (b) A dog may not be tethered for more than three (3) hours total in any twenty-four-hour period.
- (c) Any device used to tether a dog must be at least ten (10) feet long and attached in a manner that prevents injury to the dog or entanglement.
- (d) The device used to tether the dog can weigh no more than ten (10) percent of the dog's body weight and must allow access to food and water.

- **Sec. 18.2.5 - Permit to keep near residences.**

- (a) No person shall stable, tie, maintain, corral, or otherwise keep within two hundred (200) feet of any dwelling (other than the owner's), house, apartment or other residence occupied by any person, animals other than pets without first obtaining in writing, signed by the Town.
- (b) Prohibited animals within the 200-foot residential buffer include but are not limited to: cattle, horses, mules, swine, sheep, goats, and fowl.

- **Sec. 18.2.6 - Livestock.**

- (a) Livestock and domestic fowl of all descriptions are prohibited in any area of the Town except areas zoned for residential purposes by the zoning ordinance.
- (b) Except for female domestic chickens as allowed in subsection (d), it shall be unlawful, regardless of zoning, for any person to maintain, keep, house, or stable any horse, mule, pony,

cow, sheep, goat, domestic fowl or livestock within two hundred (200) feet of any dwelling, school, church, business, commercial or professional development.

(c) Not more than a total of three (3) of such animals shall be maintained on one (1) lot and such lot must contain no less than one (1) acre per animal.

(d) No more than five (5) domestic female chickens shall be maintained on one (1) lot.

(e) All livestock shall be kept and maintained in an enclosed area.

(f) Stables shall be constructed and maintained in conformity with the requirements of the Montgomery County Board of Health and the North Carolina State Building Code.

(1) Shelter must aid in the prevention of animal cruelty with a sufficient supply of shade, food and water for the animal(s).

(2) Once stable plans and area have been approved as to sanitation requirements by the Health Department, application shall then be made to the Building Inspector for a permit for such construction.

• **Sec. 18.2.7 - Exotic or wild animals.**

(a) It shall be unlawful for any person to keep, maintain, possess or have under his control within the Town any venomous reptile or any other wild or exotic animal.

(b) It shall be unlawful to keep and confine native wildlife on any premises.

• **Sec. 18.2.8 - Confinement and control of inherently dangerous mammals.**

(a) It shall be unlawful for any owner to keep an inherently dangerous mammal within the Town's corporate limits.

(b) Exceptions. The following shall be exempt from this ordinance:

(1) Any nonprofit institution or exhibitor or dealer, which owns or harbors inherently dangerous mammals for research, provided that such institution/facility/premises are licensed by the U.S. Department of Agriculture or Interior.

(2) Traveling fairs, circuses and carnivals shall also be exempt from this section.

• **Sec. 18.2.9 - Penalties for violation.**

Any person, firm or corporation violating any of the provisions of any section or division of this chapter for which no other penalty is provided, or failing or neglecting or refusing to comply with

same, shall, upon conviction, be guilty of a Class 3 misdemeanor and subject to a fine not to exceed two hundred dollars (\$200.00) or imprisonment not to exceed thirty (30) days, and each day that any of the provisions of this ordinance are violated shall constitute a separate offense.

(a)

Any person who violates any provision of this ordinance may be fined a civil penalty of two hundred dollars (\$200.00). If the violation is continued, each day's violation shall constitute a separate offense. Payment of said penalties shall be made within ten (10) days. Civil penalties may be assessed by citation, hand delivered to the owner or by certified mail and recovered by the Town of Biscoe in a civil action in the nature of a debt.

(b)

Violations of this ordinance may subject the violator to criminal as well as civil action. In addition to the civil penalties or fees imposed under this ordinance, violation of this ordinance shall be a misdemeanor for which a criminal summons may be issued.

(c)

Payment of a fine imposed in criminal proceedings pursuant to this subsection does not relieve a person of his liability for taxes, civil penalties or fees imposed under this ordinance.

(d)

In addition, enforcement of this ordinance may be by appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction.

- **Sec. 18.2.10 - Exemptions.**

(a)

The Town Council reserves the right to waive the requirements of this ordinance on a case-by-case basis for any property annexed after November 1, 2007, into the corporate limits and which will not be subdivided.

(b)

Where property owners can demonstrate existing livestock has been kept on property within the corporate limits on October 1, 2007, the Planning Director or Town Council may grant a waiver to the requirements of this ordinance for the remainder of the life of those animals. Such waivers will be discretionary and intended for existing conditions that meet the spirit and intent of the ordinance.

- **CHAPTER 18.3 - LITTERING**

- **Sec. 18.3.1 - Littering prohibited.**

It shall be unlawful for any person to throw or deposit on any street or sidewalk, or on any private property, except with written permission of the owner or occupant of the private property, any trash, refuse, garbage, building material, cans, bottles, broken glass, paper, or any type of litter.

- **Sec. 18.3.2 - Littering from vehicles.**

It shall be unlawful for any person while a driver or a passenger in a vehicle to throw or deposit litter on any street or other public place within the Town, or on private property.

- **Sec. 18.3.3 - Maintenance of public areas.**

Every owner, lessee, tenant, occupant, or other person in charge of any commercial establishment or premises which maintains any paved or unpaved areas for the use of the public, either for parking or as access areas and incident to the carrying on of the principal business of any commercial establishment or premises and which parking or access areas abut or lie within ten (10) feet of any public street or other public way, shall keep and maintain the areas clean and free from trash, litter, rubbish, and any materials liable to be blown, deposited, or cast on the street or other public way.

- **Sec. 18.3.4 - Receptacles.**

Suitable receptacles may be provided in parking or access areas within the meaning of section 18.3.4 of this chapter. The receptacles shall be plainly marked and constructed to prevent scattering of any trash, litter, rubbish, or other materials deposited therein.

- **CHAPTER 18.4 - NUISANCE**

**State Law reference**— Abatement of public health nuisances, see G.S. 160A-193.

- **Sec. 18.4 - Nuisance conditions.**

The existence of any of the following conditions on any vacant lot or other parcel of land within the corporate limits is declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (a) The growth of noxious weeds or grass to a height in excess of twelve (12) inches.
- (b) 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 is or may be dangerous or prejudicial to the public health.
- (c) 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 is or may be dangerous or prejudicial to the public health.
- (d) The open storage of any abandoned ice box, refrigerator, stove, glass, building material, building rubbish, or similar items.
- (e) Any other condition detrimental to the public health.

- **Sec. 18.4.1 - Investigation.**

The Town's Code Enforcement Officer, upon reasonable suspicion of the existence of any of the conditions described in section 18.4.1, shall investigate the affected lot and determine whether conditions exist which constitute a public nuisance as declared in section 18.4.1.

- **Sec. 18.4.2 - Notice to abate; right to appeal; abatement.**

(a)

If the Town's Code Enforcement Officer determines that a nuisance condition exists on the affected lot, the officer shall give notice to the owner of the premises to abate or remove such conditions within ten (10) calendar days. Serving of such notice shall be by any one (1) of the following methods:

(1)

By delivery in person or by leaving the notice at the usual place of abode of the owner with a person who is over the age of sixteen (16) years of age and a member of the family of the owner.

(2)

By the deposit of first class mail, postage prepaid, to the owner of the property at his or her last known address, as listed by the Montgomery County Revenue Department.

(3)

By the posting of a placard in a conspicuous place on the premises on which the violation exists in conjunction with first class mail notice.

(b)

Service shall be deemed sufficient if the first class mail is not returned by the post office within ten (10) days of deposit. Service by posting shall be deemed sufficient if the first class mail is returned and notice of the pending proceedings was posted in a conspicuous place on the property affected on the day the first class mail notice was deposited.

(c)

The notice shall state specifically which nuisance condition listed in Section 18.4.2 is present on the affected parcel of land, and shall also inform the property owner that he or she may, within the ten-day period, appeal the Code Enforcement Officer's decision to the Town Council by giving written notice to the Code Enforcement Officer.

(d)

An appeal made by the property owner within ten (10) days of the service of notice shall stay the abatement of the property until the Town Council has made a final determination on whether a nuisance condition exists on the affected lot.

(e)

If the property owner, within this ten-day period, neglects to abate the nuisance condition and fails to appeal the Code Enforcement Officer's decision to the Town Council, then the Code Enforcement Officer shall cause the condition to be removed or otherwise abated.

(f)

This section shall not apply if the property owner can show that the nuisance was created solely by the actions of another.

- **Sec. 18.4.3 - Notice of appeal hearing; hearing.**

(a)

Upon an appeal to the Town Council, the Town's Code Enforcement Officer shall deposit a first class mail notice, postage prepaid and addressed to the appealing owner, specifying the time and place for the appeal to be heard by the Town Council.

(b)

The hearing shall be heard at the next regularly scheduled Town Council meeting for which agenda items are being accepted by the Town Clerk. The owner or any part in interest shall have the right to file a written answer to the Town Council and to appear in person, or otherwise, and give evidence at the place and time fixed in the notice. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in such hearings.

- **Sec. 18.4.4 – Town Board decision.**

The Town Board of Commissioners, after hearing all the evidence presented at the nuisance appeal hearing, may reverse the Code Enforcement Officer's determination that a nuisance condition exists on the subject property. The Board of Commissioners, however, may affirm the Code Enforcement Officer's findings and it then shall enact an ordinance specifically declaring the condition existing on the affected parcel of land to be a public nuisance which is dangerous and prejudicial to the public health or safety and ordering the Code Enforcement Officer to abate the nuisance condition. The Board of Commissioners decision shall be final.

- **Sec. 18.4.5 - Abatement by Town.**

Following an appeal hearing, if the Town Council has ordered the Town's Code Enforcement Officer to abate the nuisance condition on the affected lot, the Code Enforcement Officer shall deposit a first class mail notice, postage prepaid, to the property owner as reported by the Montgomery County Tax Department that he or she must abate the nuisance within ten (10) days of the deposit. If the property owner within this ten-day period neglects to abate the public nuisance condition, then the Code Enforcement Officer shall cause the condition to be removed or otherwise remedied by having employees of the Town, or subcontractors retained by the Town, go upon the premises and remove or otherwise abate the nuisance under the supervision of the Code Enforcement Officer. The expense of remedying the abatement shall be paid by the property owner. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred, and such lien shall have the same priority and be collected as unpaid ad valorem taxes. In addition hereto, any such unpaid expenses shall be a lien on other property owned by such property owner located within the Town's corporate limits, or within one (1) mile of the Town's corporate limits, except for such property owner's primary residence, and such lien shall have the same priority as a money judgment lien.

- **Sec. 18.4.6 - Costs of abatement; lien.**

(a)

The actual cost and associated expenses including advertising, certified mail and attorneys fees 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 Tax Collector to mail a statement of such charges to the owner or other person in possession of the premises with instructions that such charges are due and payable within thirty (30) days from the receipt thereof.

(b)

In the event 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, such charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. 160A-193.

- **Sec. 18.4.7 - Annual notice to chronic violators.**

The notice given to violators required in Section 18.4.7 is modified as set forth herein for chronic violators of the nuisance condition for tall noxious weeds or grass enumerated in Section 18.4.7(a). A chronic violator is a person who owns property whereupon, in the previous calendar year, the Town gave notice of violation at least three (3) times for the nuisance condition of tall noxious weeds or grass. The Town may notify a chronic violator of the Town's public nuisance ordinance that, if the violator's property is found to be in violation of Section 18.4.7 (a) in the subsequent and consecutive year(s), 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 land or premises where the nuisance occurred and shall have the priority and be collected as unpaid ad valorem taxes, unless paid by the property owner. In addition hereto, any such unpaid expenses shall be a lien on other property owned by such property owner located within the Town's corporate limits, or within one (1) mile of the Town's corporate limits, except for such property owner's primary residence, and such lien shall have the same priority as a money judgment lien. The annual notice shall be sent by certified or registered mail.

- **Sec. 18.4.8 - Procedure not exclusive.**

The procedure set forth in this chapter shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances and this chapter shall not prevent the Town from proceeding in a criminal action against any person, firm, or corporation violating the provisions of this chapter as provided in G.S. 14-4.