

Chapter 52 Nuisances

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 4-19-2006; 8-16-2006.]

§ 52-1. Purpose and Objectives.

- A. Purpose. This Chapter is enacted to protect the health, safety, and general welfare of the people of Henderson County pursuant to powers granted under [N.C.G.S. 153A-132](#), [N.C.G.S.153A-136](#) and [N.C.G.S. 153A-140](#), the Henderson County Code, and subsequent recodifications and/or amendments, and other applicable legislation, 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 county-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 assure that people are not unnecessarily exposed to dangers of public nuisances.
 - (4) To ensure proper actions are taken to abate public nuisances.

§ 52-2. Jurisdiction and Exception.

- A. Jurisdiction. This Chapter shall apply to all the land in Henderson County lying outside the incorporated boundaries of any municipality.
- B. Exception. This Chapter shall not regulate property being actively used as a bona fide farm which is any tract of land containing at least 3 acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry and including facilities for the sale of such products from the premises where produced, provided that a farm shall not be construed to include commercial poultry and swine production, cattle feeder lots and furbearing animal farms.

§ 52-3. Prohibitions.

The creation or maintenance of a public nuisance is prohibited. 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 discharging into a body of water.
- B. An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or nonmaintained swimming pool, mine shaft or tunnel.
- C. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent proof container designed or reasonably adapted for such purpose.
- D. Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death.
- E. Significant outdoor storage of solid waste including but not limited to: decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, furnaces, home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all-terrain vehicles, toys, bicycles, junk or any other substances in which flies, mosquitoes, other disease-carrying insects, rodents or other vermin can harbor.
- F. Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.
- G. Any junked motor vehicles without a current vehicle restoration permit and/or any abandoned manufactured home as defined below.

- H. Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.
- I. Breeding grounds which support mosquito larvae and mosquitoes capable of carrying West Nile Virus, La Crosse Encephalitis Virus, or any other disease-causing microorganism.
- J. Use of a recreational vehicle as a primary residence without permitted electric, water, and sewerage connections.
- K. Recreational vehicles used to store solid waste.

§ 52-4. Outdoor Storage.

- A. Outdoor storage shall not be allowed between any building and the right-of-way on the side of the property which is the front of the property for zoning purposes. Such storage shall not exceed 1/3 of the rear yard area, shall not be closer than 10 feet to the side lot lines or an alley and shall be at least 15 feet from any street. Use of land for outdoor storage of items not related to the property's use in relation to any zoning permit granted for the property shall not be permitted.
- B. Outdoor storage by a business is allowed so long as a part of the business and in compliance with a valid zoning permit.

§ 52-5. Definitions.

The following terms are defined for purposes of this Chapter:

- (1) Abatement - The proper removal and/or containment of substances or materials hazardous to humans and/or the environment. Abatement is part of remediation.
- (2) Abandoned Manufactured Home - A manufactured home that has not had legal power or was not properly connected to a permitted septic system and water supply in the last 6 months, not to be interpreted to include a manufactured home stored or parked in accordance with a valid zoning permit.
- (3) Board Of Commissioners - The currently elected Henderson County Board of Commissioners and may be referred to as "the Board" or "the County Board."
- (4) Building - Any structure having a roof supported by columns or by enclosed walls and intended for shelter, housing or enclosure of persons, animals or chattels.
- (5) County - Henderson County.
- (6) Department - The County Department responsible for enforcing this chapter and may be referred to as "the Department."
- (7) Junk - Litter, debris, waste materials of any kind, dead animals, used or unserviceable automobile and machinery parts, used and nonfunctional furniture and appliances, and used and nonfunctional tools, equipment, and implements, but shall not include compost piles for normal, personal or noncommercial use, in their proper location.
- (8) Junked Motor Vehicle - A motor vehicle that does not display a current license plate or vehicle registration.
- (9) Manufactured Home - A single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act 1974 (which became effective June 15, 1976), as amended. For purposes of this chapter, however, the term includes mobile homes.
- (10) 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.
- (11) 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.
- (12) Park Model (Recreational Vehicle) - A vehicle which is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is self-propelled or permanently towable by a light duty truck and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel, and seasonal use. Recreational vehicles are not subject to the Manufactured Home Construction and Safety Standards.

- (13) 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.
- (14) Property - Publicly or privately owned real property including parcels of land, buildings or structures.
- (15) Property Agent - A person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.
- (16) Public Nuisance - Any activity or failure to act that adversely affects the public 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.
- (17) Real Property, Real Estate, And Land - Not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging or in any way appertaining to the property. These terms also mean a manufactured home as defined in [N.C.G.S. 143-143.9\(6\)](#) if it is a residential structure; has the moving hitch, wheels, and axles removed; and is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed and where the lease expressly provides for disposition of the manufactured home upon termination of the lease. A manufactured home as defined in [N.C.G.S. 143-143.9\(6\)](#) that does not meet all of these conditions is considered tangible personal property.
- (18) Vehicle Restoration Permit - A permit that allows persons to actively restore an unlicensed and unregistered vehicle.
 - a. Persons storing any motor vehicle for more than 30 days outside a fully enclosed permanent structure for the purpose of restoration shall obtain a Vehicle Restoration Permit from the Department.
 - b. This permit shall allow for 1 restoration vehicle and up to 1 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 6 months.
 - d. A maximum of 2 six-month extensions may be granted upon request, provided substantial progress can be proven in the restoration of the vehicle at each extension interval.
 - e. Progress will be measured by receipts for the purchase of parts or services or visible reconstruction or deconstruction.
 - f. At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil or becoming a harborage for vermin.
 - g. Upon the permit expiration date, the vehicle shall be removed or placed inside a fully enclosed building as required by this chapter.
 - h. The permit shall be placed in the vehicle in a location viewable from outside the vehicle.

§ 52-6. Administration.

- A. Henderson County Ordinances. Except where otherwise specified, this Chapter is subject to all provisions of the Henderson County Code.
- B. Declaration as a public nuisance.
 - (1) It shall be the duty of the Department to determine whether or not a public nuisance exists.
 - (2) For purposes of emergency response and notification to applicable authorities and posting for the public, a zoning enforcement officer may determine that a structure, property, or portion of a property constitutes a public nuisance pursuant to a memorandum of understanding with the Henderson County Department of Public Health.

- C. Modifications to or dismissal of the public nuisance declaration.
 - (1) The Department may modify conditions of the declaration or dismiss the declaration of a public nuisance.
 - (2) Such modifications or dismissal shall occur only after the Department has confirmed that the violation no longer exists.
 - (3) The Department will base its criteria for determining levels of contamination on the best health and safety information available at the time of the remediation and cannot be held liable for future discoveries.
 - (4) For good cause shown, the owner or occupant may request authorization from the Department for an extension of time to complete abatement activities. The Department may grant such extension if the extension does not increase the risk to public or safety and is deemed appropriate by the Department. An extension will be no longer than 30 days and must show substantial improvement or the completion of that deadline will result in penalty.
- D. Access to premises and records. The owner or occupant shall, upon the request of the Department and after proper identification, permit access to all parts of the site or structure as often as 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 Department shall complete the requirements of an administrative search warrant in order to inspect the complaint.
- E. Interference with the Department. No person shall in any way interfere with or hinder the Department in the performance of duties, or refuse the Department access to gather information necessary to ascertain compliance with this Chapter.

§ 52-7. Investigation and Response to Public Nuisance.

- A. Department owner notification. Upon declaration of a public nuisance, the Department shall give written notice of its determination and orders to abate the nuisance to the owner, occupant and property agent, if applicable. This notice shall be served in person, by regular mail, or by an officer authorized to serve a warrant 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 at the property.
 - (3) A summary of the owner's and occupant's responsibilities under this chapter.
 - (4) Specific orders 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 notice unless a shorter time is required due to the Department's further determination that the immediate abatement is necessary to protect public and safety. In such cases, the reason for a shortened abatement period shall be specified.
 - (6) Information regarding a right of appeal as provided in §52-9 of this Chapter and that, unless the threat to public is abated or removed in accordance with the terms of the notice, the Department will have the public nuisance abated or removed at the expense of the owner under the provisions of [N.C.G.S. 153A-132](#), this Chapter, or other applicable state or local law.
- B. 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 Department shall post a written or printed notice on the property stating that, unless the threat to the public is abated or removed within 30 days, the Department will have the public nuisance abated or removed at the expense of the owner under the provisions of [N.C.G.S. 153A-132](#), this Chapter, or other applicable state or local law.
- C. Public notification. The Department shall provide information in writing about the public nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:
 - (1) Child Protection Division in situations of potential child maltreatment or endangerment;

- (2) Adult Protection Division 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) The local municipal clerk;
 - (5) Local law enforcement officer; or
 - (6) Other state and local authorities that may have public or environmental protection responsibilities.
- D. Warning sign. The Department shall post a warning sign when deemed necessary to further protect the public 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 Department or law enforcement department posting the sign. Any person other than the Department or designated agent that removes a warning sign shall be in violation of this Chapter. A draft sign is attached to this Chapter as Attachment 1.
- E. Department abates public nuisance. If the owner, property agent or occupant fails or neglects to comply with the requirements in the notice provided under subsection A of this section, then the Department shall abate or remediate the public nuisance described in the notice. The Department will recoup such costs as necessary to abate the public nuisance as provided in §52-8 of this Chapter.
- F. Vacating the public nuisance order. Upon Department verification of proper abatement, remediation or removal at the site, the Department shall issue written notice to those persons served notice under subsection A of this section that the public nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under subsection C of this section.

§ 52-8. Costs and Reimbursements.

- A. Recovery of costs.
- (1) If the Department is required to remove, abate or remediate a public nuisance, the County 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 County shall extend the cost as assessed and charged against said real property.
 - (2) When the estimated cost of abatement and remediation exceeds 75 percent of the County Assessor's market value of the structure, the County Manager or designee is authorized to notify the property owner of the County's intent to remove and dispose of the affected property instead of proceeding with abatement and remediation. For motor vehicles, the County will use the Kelley Blue Book value or equivalent in determining market value.
 - (3) Nothing herein precludes or limits the County from seeking recovery of costs through other methods allowed by federal or state law.
- B. Subrogation rights. Nothing in this Chapter is intended to limit the subrogation rights of any party and the owner occupants. The County shall maintain the right to recover costs, referenced in this section, from persons contributing to the damage.

§ 52-9. Appeals.

- A. Right of appeal. When a public nuisance is declared, an owner and/or occupant of the affected property may appeal the declaration, including an order for abatement or remediation from the Department, by filing a written request with the Henderson County Zoning Board of Adjustment for an administrative hearing within 10 calendar days of the date of service under §52-7A. In the event of an unknown or absent property owner, the appeal must be requested within 10 calendar days of the day of posting of the notice under §52-7B.

- B. Hearing. If any owner or occupant makes a written request to the Zoning Board of Adjustment for hearing, such hearing shall be held before the Zoning Board of Adjustment.
- C. Schedule. The hearing shall be held at the next available meeting after the request for a hearing was received.
- D. Notice. The Department shall mail a notice to the appealing party of the time and place of the hearing at least 10 calendar days prior to the hearing.
- E. Witnesses and evidence. All parties shall have full opportunity to respond to and present evidence and witnesses.
- F. Standard of proof. The appellant shall have the burden of proving its position by clear and convincing evidence.
- G. 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.
- H. Record of hearing. The hearing shall be recorded, and the minutes of the meeting shall be approved by the Zoning Board of Adjustment at their next scheduled meeting.
- I. Notice of decision. The decision of the Zoning Board of Adjustment shall be issued within 10 calendar days following the hearing. Unless otherwise provided by law, the decision of the Zoning Board of Adjustment shall constitute the final decision.
- J. 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 30 calendar days after the party receives the final decision from the County Zoning Board of Adjustment.

§ 52-10. Disclaimer of Liability.

Liability on the part of, or a cause of action against, Henderson County or any officer, employee or agent thereof for any damages that may result from administration and enforcement of this Chapter shall be limited as provided by [N.C.G.S. 153A-132](#).

§ 52-11. Fees.

Fees for the Department complaint investigation, verification, administration, and enforcement of violations of this Chapter shall be those established by resolution, as amended from time to time, of the Henderson County Board of Commissioners.

§ 52-12. Violations and Penalties.

- A. Misdemeanor. Any person who violates this Chapter, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the Department, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. Each day of violation constitutes a separate offense. Violation of this Chapter shall be prosecuted under Henderson County Code §1-14, Violations and Penalties, Subsection A, Criminal penalties.
- B. Civil remedies. In the event of a violation or threat of violation of this Chapter, the County Attorney may take appropriate action to enforce this Chapter, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations. The County Attorney enforcing provisions of this Chapter may seek costs and expenditures, including staff time and attorneys' fees. Violation of this Chapter shall be prosecuted under Henderson County Code §1-14, Violations and Penalties, Subsection B, Civil penalties.
- C. Citations. Whenever the Department discovers a violation of this Chapter, a citation may be issued to the person charged with the violation, or in case of a corporation or municipality, to any officer or agent expressly or impliedly authorized to accept such issuance.

§ 52-13. Through 52-25. (Reserved)

Attachment 1

WARNING!

THIS PROPERTY IS IN VIOLATION OF THE HENDERSON COUNTY PUBLIC NUISANCE ORDINANCE.

DUE TO THE AMOUNT OF OUTDOOR STORAGE, THIS PROPERTY HAS BEEN DETERMINED TO BE UNSAFE.

THIS PROPERTY IS IN VIOLATION AS:

_____ **A HARBORAGE FOR VERMIN**

_____ **A SOLID WASTE VIOLATION**

_____ **A JUNKYARD BECAUSE OF JUNKED CARS, ABANDONED MANUFACTURED HOMES, OR OUTDOOR STORAGE**

_____ **AN ENVIRONMENTAL NUISANCE**

Henderson County Department: _____

Representative: _____

Date: _____

Phone: _____

Attachment 2

VEHICLE RESTORATION PERMIT

Name

Address

Make / Model Vehicle V.I.N. #

1. Persons storing any motor vehicle for more than 30 days outside a fully enclosed permanent structure for the purpose of restoration shall obtain a Vehicle Restoration Permit from the department.
2. This permit shall allow for one restoration vehicle and up to one parts vehicle that must be compatible to the vehicle being restored.
3. The permit allows for outdoor storage of the vehicle(s) for a period of up to six (6) months.
4. A maximum of two (2) six (6) month extensions may be granted upon request, provided substantial progress can be proven in the restoration of the vehicle at each extension interval.
5. Progress will be measured by receipts for the purchase of parts or services or visible reconstruction or deconstruction.
6. At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil or becoming a harborage for vermin.
7. Upon the permit expiration date, the vehicle shall be removed or placed inside a fully enclosed building as required by this Ordinance.
8. The permit shall be placed in the vehicle in a location viewable from outside the vehicle.

I, the undersigned have read and understand the requirements of this permit.

Signature:

Date:

(Office use only)

Date

Permit Fee: \$

Permit # _____ Expiration Date: