

ORDINANCE 16-004

**AN ORDINANCE OF THE TOWN OF PIKEVILLE, NORTH CAROLINA,
REPEALING CURRENT CHAPTER 94: NUISANCES, AND REPLACING WITH A NEW CHAPTER 94:
NUISANCES; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS;
PROVIDING FOR NUISANCE CONDITIONS; PROVIDING FOR INSPECTION/INVESTIGATION; PROVIDING
FOR NOTICE TO ABATE; PROVIDING FOR ABATEMENT BY TOWN; PROVIDING FOR COSTS OF
ABATEMENT; PROVIDING FOR A LIEN; PROVIDING FOR PROCEDURE NOT BEING EXCLUSIVE REMEDY;
PROVIDING FOR ENFORCEMENT OF ORDINANCES; PROVIDING FOR AN EXPEDITED PROCEDURE FOR
CHRONIC VIOLATORS; PROVIDING FOR A PENALTY;
PROVIDING SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, a review of Chapter 94 of the Town of Pikeville Code of Ordinances, revealed that certain changes were necessary to alleviate procedural issues related to the enforcement and collection of nuisance abatement fees as well as the need to add additional nuisance provisions for the protection of the public health, safety and general welfare ; and

WHEREAS, in light of such acknowledgment by the Board of Commissioners of the Town of Pikeville, the Board has determined that it is in the best interests of the Town to repeal and replace Chapter 94 of the Town of Pikeville Code of Ordinances, so as to alleviate procedural issues related to the enforcement and collection of nuisance abatement fees and to add additional conditions that constitute a public nuisance; and

WHEREAS, in light of such concerns, it has been determined by the Board that it is in the best interests of the Town to repeal the current Town Nuisance Ordinance contained in Chapter 94 of the Town Code of Ordinances, and replace it with a new Town Nuisance Ordinance contained in a new Chapter 94 of the Town Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Pikeville, North Carolina, as follows:

Section 1. Repeal Current Chapter 94 of Town Code, and Replace with a New Chapter 94 of Town Code.

Chapter 94 of the current Town of Pikeville Code of Ordinances, which details Nuisances is hereby repealed in its entirety, and is replaced with a new Chapter 94 of the Town of Pikeville Code of Ordinances, which sets forth rules, regulations, and procedures associated with Nuisances, and which are expressed in the following Ordinance, as noted hereafter:

CHAPTER 94: NUISANCES

Section

- 94.01 Title
- 94.02 Applicability
- 94.03 Definitions
- 94.04 Nuisance Conditions
- 94.05 Inspection/Investigation
- 94.06 Notice to Abate
- 94.07 Abatement By Town

- 94.08 Costs of Abatement; Lien
- 94.09 Procedure Not Exclusive
- 94.10 Enforcement of Ordinances: Continued Violations
- 94.11 Chronic Violators

Section 94.01 TITLE.

This Chapter shall be known as the Town of Pikeville Nuisance Ordinance Rules and Regulations. This Chapter may be cited as the Town Nuisance Ordinance.

Section 94.02 APPLICABILITY.

The terms, definitions, rules, and regulations associated with the Town Nuisance Ordinance shall apply throughout the geographical/corporate limits of the Town.

Section 94.03 DEFINITIONS.

For purposes of the Town Nuisance Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number shall include the singular number, and words in the singular number shall include the plural number. The words “*shall*” and “*will*” are always mandatory, and not merely directive or indicative. The word “*may*” is permissive, and not mandatory.

- (a) *Board* shall mean the Board of Commissioners of the Town of Pikeville, North Carolina.
- (b) *Chronic Violator* shall mean a person who owns property, and has received Notice, at least three times in the previous calendar year, that conditions existed on such property, so as to constitute a public nuisance, and violation of the Town Nuisance Ordinance.
- (c) *County* shall mean Wayne County, North Carolina.
- (d) *County Health Department* shall mean Wayne County Health Department.
- (e) *G.S.* shall mean General Session.
- (f) *Gutter* means any structure, fabrication, roadwork, or any other construction designed to direct the flow of water along the edge of a street, including, but not limited to, a curb.
- (g) *State* shall mean the State of North Carolina.
- (h) *Street* means any public alley, street, highway, thoroughfare, or other road.
- (i) *Town* shall mean the Town of Pikeville, North Carolina.
- (j) *Town Administrator* shall mean the Administrator for the Town of Pikeville, North Carolina.
- (k) *Violator*. A violator shall be deemed to be the owner of the premises, the agent of the owner authorized to be responsible for the premises, and/or the appropriate occupant, lessee, employee or person having immediate beneficial use of and/or responsibility over the premises or property.

Section 94.04 NUISANCE CONDITIONS.

The existence of any of the following conditions on any lot or other parcel of land within the corporate limits is declared to be noxious, dangerous, detrimental and prejudicial to the public health, safety, or general welfare and to constitute a public nuisance in violation of the provisions of this chapter:

(A) *Weeds and/or Uncontrolled Growth of Vegetation; Maintenance of Storm Water System.*

(1) The uncontrolled growth of weeds or turf grass to a height in excess of 12 inches, throughout at least twenty-five percent (25%) of the property and/or the uncontrolled growth of brush and/or bushes thereby causing or threatening to cause infestation by rats, mice, snakes or vermin of any kind or constituting a fire hazard or which in any way is a hazard detrimental to the public health, safety, or welfare.

(2) It shall be illegal and unlawful for any individual or business to scatter, cast, throw, blow, place, sweep, rake, or deposit anywhere on a town street, curbing, and/or sidewalk any limbs, trees, tree trimmings, branches, stumps, brush, weeds, shrubbery, trash, sand, grass clippings, leaves, yard trimmings, litter and/or other debris, except at those times, and such manner, as specifically established by the Town for the purpose of collection of landscape waste. Such accumulation is dangerous and/or prejudicial to the public health and safety, lessens the efficient operation of the storm drainage system of the town, is contrary to storm water regulations, and constitutes a public nuisance.

(3) The owner of any property and/or dwelling unit shall have the sole responsibility to remove and to exercise reasonable diligence at all times to keep any street, curbing, and/or sidewalk clean of any grass, limbs, trees, tree trimmings, branches, stumps, brush, weeds, shrubbery, trash, sand, grass clippings, leaves, yard trimmings, litter, debris and other used or waste materials intentionally or unintentionally growing, scattered, discarded, thrown, blown, swept, raked, deposited, or haphazardously left in any street, curbing, and/or sidewalk. The owner of any property and/or dwelling unit shall have the sole responsibility to prevent the continuous, ongoing or persistent, accumulation, growth and/or depositing of same from drifting or blowing to adjoining premises and gutters by removing such waste. Such accumulation is dangerous or prejudicial to the public health and safety, lessens the efficient operation of the storm drainage system of the town, is contrary to storm water regulations, and constitutes a public nuisance.

(4) The owner of any property and/or dwelling unit, including unoccupied property, and/or any business or corporation in control of such lawn or yard maintenance shall have the sole responsibility to remove and to exercise reasonable diligence at all times to keep the premises from the street to the front and/or side yard, including the curbing and/or sidewalk clean of any accumulation or growth of grass, limbs, trees, tree trimmings, branches, stumps, brush, weeds, shrubbery, trash, sand, grass clippings, leaves, yard trimmings, litter, debris and other used or waste materials intentionally or unintentionally growing, scattered, discarded, thrown, blown, swept, rake, deposited, or haphazardously left. Such accumulation is dangerous or prejudicial to the public health and safety, lessens the efficient operation of the storm drainage system of the town, is contrary to storm water regulations, and constitutes a public nuisance.

(B) *Accumulation of Litter, Trash, Construction Materials and/or Other Debris.*

(1) 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.

(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 is, or may be, dangerous or prejudicial to the public health.

(3) The open storage of any abandoned ice box, refrigerator, stove, glass, nails, nail gun, building material, building rubbish, or similar item.

(C) Creating conditions giving rise to the infestation of bees/wasps, rats, snakes, or vermin of any kind, which is, or may be, dangerous to the public health, safety, or welfare.

(D) Any condition detrimental to the public health, which violates the rules and regulations of the County Health Department.

SECTION 94.05 INSPECTION/INVESTIGATION.

The Town Administrator, or his/her designee, upon knowledge of a complaint from any person of the existence of any of the conditions described in §94.04 or upon the observation of the existence of any of the conditions described in §94.04, shall make such investigation and/or visual inspection as may be necessary to determine whether conditions exist which constitute a public nuisance as declared in §94.04. During said investigation and/or inspection the Town Administrator, or his/her designee, shall determine whether conditions exist so as to require (1) removal within a set period of time (not less than three calendar days, not more than 10 calendar days); or (2) further investigation by an appropriate County Health Department official.

In either occurrence, the Town Administrator, or his/her designee, may contact the violator and notify such violator of the condition in question, and the timeframe for removal of the condition in question.

Should inspection by an appropriate County Health Department official determine that conditions exist at the inspected property, so as to constitute a public nuisance, or require removal of any conditions, in order to avoid the inspected property being considered a public nuisance, then the owner, occupant, and/or person having use and responsibility over the premises or property shall receive a Notice detailing the conditions that exist, and the timeframe for removing the conditions that exist, which constitute a public nuisance. The timeframe for removing the conditions that exist, which constitute a public nuisance, shall be not less than three calendar days, and not more than 10 calendar days.

SECTION 94.06 NOTICE TO ABATE.

Whenever it shall come to the attention of the Town Administrator, or his/her designee, or other authorized town officer or representative, that there exists on any lot or parcel of land in the town, occupied or not, any of the conditions enumerated in this chapter, the Town Administrator, or his/her designee, shall forthwith give the owner, occupant, and/or person having the property under his/her control notice thereof to abate or remove the conditions or otherwise comply with the town code. Such notice shall be deemed sufficient if given by personal service of written notice or service by registered or certified mail to such person, owner and/or occupant at his/her last known address. The person so served shall have such time as set by the Town Administrator, or his/her designee, in which to remedy the same or the town shall cause the same to be remedied, unless an appeal for relief in writing is made within this time period to the Board of Commissioners. The period in which to comply as granted by the Town

Administrator, or his/her designee, shall be at least three calendar days but not more than ten calendar days. In lieu of, or in addition to such notice, the officer or inspector may issue a citation notice and take enforcement actions as set forth in §§ 94.07 and 94.10 in the Code of Ordinances. In the event the Town Administrator determines that a nuisance is an immediate detriment to human health, safety or welfare, the Town Administrator may take appropriate action to summarily abate the condition without notice.

In the event that conditions continue to exist at such property, as set forth in the Notice beyond the timeframe listed in the Notice, then the Town Administrator may issue a five calendar day Notice to Abate to the property owner, occupant, and person having the property under his/her control.

The five calendar day Notice to Abate shall convey the following to the owner, occupant, and person having control of the lot or property: (1) the conditions that exist that give rise to the public nuisance; (2) the date and time by which the conditions that exist that give rise to the public nuisance must be removed (which shall be no more than five calendar days from the date of the Notice to Abate); (3) unless granted by the Board of Town Commissioners, no extension to the five calendar day Notice to Abate will be given; and (4) should the conditions that exist that give rise to the public nuisance continue beyond the date and time listed in the Notice to Abate, then the Town Administrator may authorize removal of such conditions, at the cost of the property owner, occupant or both.

SECTION 94.07 ABATEMENT BY TOWN.

(A) Prior to the five calendar day Notice to Abate, the property owner, or his/her duly authorized agent, may request, in writing, that the Town Administrator undertake whatever steps are necessary, in order to remove the conditions that resulted in the initial investigation of a possible public nuisance within the Town. In such a circumstance, the Town Administrator may authorize removal of such conditions, under the supervision of any officer, employee, or independent contractor designated by the Town Administrator. In such a circumstance, the cost of removal of such conditions will be borne by the property owner.

(B) During the five calendar days following the Notice to Abate, the property owner, or his/her duly authorized agent, may request, in writing, that the Town Administrator undertake whatever steps are necessary, in order to remove the conditions, giving rise to the public nuisance within the Town. Under such circumstances, the Town Administrator may authorize removal of such conditions, under the supervision of any officer, employee, or independent contractor designated by the Town Administrator. Further, under such circumstances, the cost of removal of such conditions will be borne by the property owner.

(C) If the property owner or occupant of the property does not remove the conditions giving rise to the public nuisance, within five calendar days of the Notice to Abate, then the Town Administrator may authorize removal of such conditions, under the supervision of any officer, employee, or independent contractor designated by the Town Administrator.

(D) If after five days' notice of the existence of any such condition, the owner, occupant and/or person having control of the lot or property, occupied or not, shall fail to cause the removal or abatement of such condition, the Town Administrator may forthwith authorize removal, abatement or remedy of such conditions, under the supervision of any officer, employee, or independent contractor designated by the Town Administrator. Upon abatement by the town, in addition to all costs of abatement, the penalties set forth in §94.10 of the Code of Ordinances may be implemented and an

administrative service fee of \$100 shall be imposed to cover administrative costs associated with abating the nuisance against the owner, occupant and/or person having control of the lot or property.

SECTION 94.08 COSTS OF ABATEMENT; LIEN.

(A) In such cases or circumstances where the Town removes the conditions giving rise to the public nuisance, the Town shall charge the property owner, occupant, and/or person having possession of the property the actual cost incurred for such removal, **plus** a \$100 administrative fee. Upon due notice by the Town, it shall then be the duty of the Finance Officer to mail a statement of such charges to property owner, occupant, and/or person having possession of the property, with instructions that such charges are due and payable within 30 days from the thereof.

(B) In the event charges for the removal of the conditions giving rise to the public nuisance, or abatement of the public nuisance are not paid within 30 days after receipt of a statement of charges, as noted elsewhere in this Ordinance, 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. Section 160A-193.

(C) 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, as provided in G.S. Section 160A-193. 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 94.09 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 the 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. Section 14-4.

SECTION 94.10 ENFORCEMENT OF ORDINANCES: CONTINUED VIOLATIONS.

(A) *General penalty.* Any person violating the provisions of this chapter shall be subject to the penalties as described in § 10.99 of this Code of Ordinances or as specified in this Chapter, whichever is greater.

(B) *Enforcement of ordinances; civil penalties.* Civil penalties may be imposed upon a violator of this code or an ordinance of the town pursuant to the procedure set forth herein:

(1) *Citations.*

(a) *Issuance of citation.* The Town Administrator other authorized officer, agent or employee of the town is empowered to issue warning citations, notices of violation and citations with fines, if there is a reasonable cause to believe that any provision of the Town Code of Ordinances has been violated. Where a provision has been violated, such citations shall be issued to the violator or property owner.

(c) *Methods of issuance of citations.* A citation shall be considered issued if it is delivered in person to the violator, or if the violator cannot be readily found, then the citation may be mailed to the last known mailing address of the owner or agent shown on public records. If the violator cannot be found and after other reasonable efforts have been made to communicate the existence of the violation to the owner or agent, then the citation shall also be considered issued if directed to the owner, agent or occupant and left at the place of residence or location of the violation.

(d) *Types of citations and notices.* It shall be in the sole discretion of the Town Administrator or other authorized officer, agent or employee of the town to determine which of the following shall be issued to a violator.

1. *Warning citation.* This citation for a violation shall be a warning citation stating that a violation of the chapter has occurred. It shall also state the circumstances involved in the violation.

2. *Notice of violation.* This notice shall state that the owner, occupant and/or person having control of the lot or property, occupied or not, shall abate or remove the conditions or otherwise comply with the town code. In lieu of, or addition to such notice, the Town Administrator may issue a citation notice and take enforcement actions as set forth in § 94.10 (B)(1)(d)3. and impose the cost of remedying or abating the nuisance as set forth in §§ 94.07 and 94.08 in the Code of Ordinances. In the event the Town Administrator determines that a nuisance is an immediate detriment to human health, safety or welfare, the Town Administrator may take appropriate action to summarily abate the condition without notice.

3. *Citations with fines.* If the violation continues after the deadline to correct a violation, then a citation with a fine in an initial amount of \$50 shall be authorized to be issued against the violator. Thereafter, each day the violation continues shall be deemed an additional offense and additional citations with increasing fines up to \$250 may be issued each day the violation continues. Any unpaid citations and delinquency charges shall be cumulative and shall be recovered in a civil action or in the nature of debt as well as any attorney fees incurred by the town incident thereto. In lieu of a civil action to recover the debt, the town may turn unpaid penalties in to a credit/collection agency for collection. The offender will be responsible for all reasonable monetary damages as required by the collections agency to recover the debt. This section may also be enforced by any appropriate, equitable action. In addition to the civil penalty, the town may impose an administrative fee up to \$100 in addition to any fines to cover the town's costs of administering a violation.

(e) *Records.* Records of citations shall be maintained for a reasonable period of time.

SECTION 94.11 CHRONIC VIOLATORS.

As authorized under G.S. Section 160A-200.1, the Town is authorized to notify a *chronic violator* that, if the *chronic violator's* property is found to be in violation of this Ordinance, then 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 such action shall become a lien upon the property, and shall be collected as unpaid taxes.

In a *chronic violator* circumstance, 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.

The Town may also give notice to a *chronic violator* with respect to overgrown vegetation, as authorized by G.S. Section 160A-200.

Section 2. If any section, subsection, sentence, clause, phrase, provision, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, provision, or portion shall be deemed a separate, distinct, and independent provision of such holding, and shall not affect the validity of the remaining sections, subsections, sentences, clauses, phrases, provisions or portions thereof.

Section 3. This Ordinance shall become effective immediately upon its enactment.

PASSED AND ENACTED after first reading, this _____ day of _____, 2016.

TOWN OF PIKEVILLE

BY: _____
Glenn Hartman, Mayor

(SEAL)

ATTEST: _____
Connie Witherspoon, Town Clerk