

## **Article 1. TITLE**

# **GARBAGE ORDINANCE FOR ALLEGHANY COUNTY, NORTH CAROLINA**

## **Article 1. AUTHORITY and PURPOSE.**

This Ordinance is enacted to protect the health, safety, and general welfare of the people of Alleghany County pursuant to powers granted under NC General Statutes Sections 153A-121, et seq., and any subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted in the future.

### **The principal objectives of this Ordinance are:**

- A. To protect the public from health nuisances, safety hazards, and sources of danger to citizens due to improper disposal of garbage.
- B. To preserve and enhance the scenic beauty in unincorporated areas of Alleghany County.
- C. To provide countywide standards for the proper disposal of garbage and to ensure proper actions are taken to enforce such standards.
- D. To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of the improper accumulation of garbage.

## **Article 2. JURISDICTION**

This Ordinance shall apply to all areas of unincorporated Alleghany, North Carolina, but not including the area inside the city limits of the Town of Sparta, North Carolina, or its extraterritorial jurisdiction.

## **Article 3. DEFINITIONS**

1. **Abatement** means the proper removal and/or containment of garbage and solid waste as those terms are defined in this Ordinance. Abatement is part of remediation.
2. **Board of Commissioners** means the currently elected Alleghany County Board of Commissioners and may be referred to as “the Board” or “the County Board”.
3. **Building** means any structure having a roof supported by enclosed walls and intended for shelter, housing or enclosure of persons, animals or chattels.
4. **County** means Alleghany County.

5. **Enforcement Officer** means the person designated by the Board of Commissioners who is responsible to enforce this ordinance (or any designee or contractor enforcing this ordinance).

6. **Garbage** means solid wastes, including post-consumer waste, household vegetable matter, animal offal, carcasses of animals, recognizable industrial byproducts, used and non-functional appliances, dilapidated furniture, construction waste, demolition waste, and roofing shingles. Garbage shall not include compost piles for normal, personal or non-commercial use.

7. **Lessee** means any person who leases real property.

8. **Nuisance** means those specific instances described in Article 4 of this Ordinance.

9. **Occupant** means 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.

10. **Owner** means 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.

11. **Property** means publicly or privately owned real property including parcels of land, buildings or structures.

12. **Property agent** means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.

13. **Real property, real estate, and land** means 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 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 G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property.

14. **Solid Waste** means construction and demolition debris and land-clearing debris. This shall not include beneficial fill consisting only of inert debris limited to concrete, brick, concrete block, used pavement asphalt, or uncontaminated soil, rock, and gravel.

15. **Tenant** means the temporary occupant of a rental unit whether or not a lease exists.

## Article 4. GENERAL PROVISIONS

No owner, occupant, tenant or lessee of any property shall deposit, store, or accumulate any garbage or solid waste upon such property that is not stored or disposed of in the following manner:

1. It shall be unlawful for any person to deposit, store, or accumulate garbage or solid waste except in any container that is durable, watertight, and rodent-proof with a close-fitting, fly-tight cover in place. It shall also be unlawful for any person to store garbage of a perishable or offensive nature for more than one week in any type of container.
2. It shall be unlawful for any person to deposit, store, or accumulate solid waste or garbage on any property in such manner as to create a fire or safety hazard.
3. It shall be unlawful for any occupant of any dwelling or dwelling unit to place or leave outside of any building longer than one week any dilapidated furniture, icebox, refrigerator, stove, or other appliance, machinery, equipment, or other item which is either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition, or which in the opinion of the enforcement officer constitutes a potential public health problem. This section shall not apply to a licensed junk dealer or licensed junk yard.
4. It shall be unlawful for any person to leave outside of any building or dwelling, in a place accessible to children, any abandoned, unattended or discarded icebox, freezer, or refrigerator or any other airtight container of any kind in which a child could get into. An acceptable alternative is to crate, strap, or lock the discarded container to such an extent that it is impossible for a child to obtain access.

## Article 5. EXCLUSIONS.

1. **Farming Operations.** Pursuant to and in the spirit of NCGS § 106-701, no activities conducted in the day to day operation of a farm (such as the spreading of manure, compost or silage piles, keeping of livestock, etc.) shall be deemed a nuisance by this ordinance.
2. **Recycling centers** using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment shall not be deemed garbage or solid waste by this ordinance.
3. **Salvage materials** collected in an enclosed building shall not be deemed garbage or solid waste by this ordinance.

## **Article 5. INVESTIGATION AND RESPONSE TO A NUISANCE COMPLAINT**

1. The Enforcement Officer shall enforce this Ordinance. The Enforcement Officer shall periodically travel the county roads for the purpose of discovering violations of this Ordinance. The Enforcement Officer may call upon other agencies as necessary to assist in enforcement of this Ordinance.
2. In addition, nuisance complaints may be submitted by any citizen or resident. Said complaints must be submitted in writing by delivering a signed letter to the County Manager or Enforcement Officer. The Alleghany County website will also have a submission form for complaints. A citizen or resident may complete and print the complaint form, sign it and deliver to either the County Manager's office or Enforcement Officer's office.
3. If the Enforcement Officer finds that any provisions of this Ordinance are being violated, he shall send a written notice to the person responsible for such violation and orders to abate the violation, if applicable. This notice shall be served in person, by certified mail, or by an officer authorized to serve a warrant. The notice shall contain the following:
  - A. Property location by street address, parcel identification number, or other property description.
  - B. Information identifying the nature of the violation at the property.
  - C. Specific orders for abatement or remediation of the violation.
  - D. Information advising the violator of the number of days or months within which the violation shall be corrected.
  - E. Information regarding a right of appeal as provided in Article 9 of this Ordinance 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 North Carolina Statutes 153A-121 and 123, this Ordinance, or other applicable state or local law.
4. Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Enforcement Officer may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized by this Ordinance.
5. 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 Enforcement Officer shall post a written or printed notice on the property stating that, unless the violation is abated or removed within a specified period of time, the Department will have the nuisance abated

or removed at the expense of the owner under the provisions of North Carolina Statutes 153A-121 and 123, this Ordinance, or other applicable state or local law.

6. The Enforcement Officer 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 and that entry is prohibited unless authorized by the Enforcement Officer or the law enforcement Department posting the sign. Any person other than the County or its designated agent that removes a warning sign shall be in violation of this Ordinance. A draft sign is attached to this ordinance as Appendix A.

### **Article 6. AUTHORITY OF ENFORCEMENT OFFICER.**

1. It shall be the duty of the Enforcement Officer to determine whether a nuisance exists.
2. For purposes of emergency response and notification to applicable authorities and posting for the public, an enforcement officer may determine that a structure, property, or portion of a property constitutes a nuisance pursuant to a memorandum of understanding with the Appalachian Regional Health Department.
3. The Enforcement Officer may modify conditions necessary to abate or remedy the nuisance or dismiss the violation upon successful remediation. Such modifications or dismissal shall occur only after the Department has confirmed that the violation no longer exists.
4. The Enforcement Officer 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.
5. For good cause shown, the owner, occupant, tenant, or lessee may request authorization from the Enforcement Officer for an extension of time to complete abatement activities and the Enforcement Officer shall have the authority to grant such an extension. The Enforcement Officer may grant such extension if the extension does not increase the risk to public or safety and is deemed appropriate. An extension will be no longer than 30 days and must show substantial improvement or the completion of that deadline will result in penalty.
6. No person shall in any way interfere with or hinder the Enforcement Officer in the performance of duties, or refuse the Enforcement Officer access to gather information necessary to ascertain compliance with this Ordinance.

### **Article 7. COUNTY ABATES PUBLIC NUISANCE**

If the owner, occupant, tenant, or lessee fails or neglects to comply with the requirements in the notice provided under Article 6 of this Ordinance, then the County, through its enforcement officer, shall abate or remediate the public nuisance described in the notice. The County may recoup such costs as necessary to abate the public nuisance as provided in Section 6 of this Ordinance.

**Vacating the public nuisance order.** Upon the Enforcement Officer's verification of proper abatement, remediation or removal at the site, the Enforcement Officer shall issue written notice to those persons served notice under Article 5 of this Ordinance that the public nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under Article 5 of this Ordinance.

## **Article 8. COSTS AND REIMBURSEMENTS**

### **Recovery of costs.**

A. If the County 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 Ordinance 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.

B. When the estimated cost of abatement and remediation exceeds seventy-five 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.

C. Costs incurred include any costs of notification of owner(s) including certified mail costs.

D. Nothing herein precludes or limits the County from seeking recovery of costs through other methods allowed by federal or state law.

**Subrogation Rights.** Nothing in this Ordinance 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.

## **Article 9. APPEALS**

**Right of Appeal.** When a public nuisance is declared, an owner, occupant, tenant, or lessee of the affected property may appeal the declaration, including an order for abatement or remediation from the County, by filing a written request with the Clerk to the Allegheny County Board of Commissioners or the Allegheny County Manager within ten calendar days of the date of service under sections 5.01. In the event of an unknown or absent property owner, the appeal must be requested within ten calendar days of the day of posting of the notice under Article

**Form of Appeal.** If any owner or occupant makes a written request to the Clerk to the Alleghany County Board of Commissioners or the Alleghany County Manager, such appeal shall be held at the next regularly scheduled meeting of the Board of Commissioners.

**Notice.** The Department shall mail a notice to the appealing party of the time and place of the hearing at least ten calendar days prior to the hearing.

**Standard of Proof.** The appellant shall have the burden of proving its position by clear and convincing evidence.

**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.

**Record of Hearing.** The hearing shall be recorded and the minutes of the meeting shall be approved by the Board of Commissioners as part of the minutes of the regular Board of Commissioners meeting.

**Notice of Decision.** The decision of the Board of Commissioners shall be issued no later than the next regularly scheduled Board of Commissioners meeting following the hearing of the appeal. The Board of Commissioners' decision shall be final.

## **Article 10. DISCLAIMER OF LIABILITY**

Liability on the part of, or a cause of action against, Alleghany County or any officer, employee or agent thereof for any damages that may result from administration and enforcement of this Ordinance shall be limited as provided by North Carolina Statutes 153A-121 and 123.

## **Article 11. FEES**

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

## **Article 12. PENALTIES**

1. Criminal Penalties. Any person who violates a provision of this Ordinance shall be guilty of a Class 3 misdemeanor and shall be subject to punishment as provided for by G.S. Section 14-4. Each day of violation constitutes a separate offense

2. Civil Penalties. Any person who is found in violation of this Ordinance shall be subject to a civil penalty of not more than \$500.00 as provided by G.S. 153A-123. Each day's violation shall be treated as a separate offense.
3. Equitable remedies. This Ordinance may be enforced by equitable remedies in accordance with G.S. 153A-123 or 153A-140, including, but not limited to, 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 may seek costs and expenditures, including staff time and reasonable attorneys' fees.

### **Article 13. SEPARABILITY**

If any provision of this Ordinance is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance.

### **Article 14. EFFECTIVE DATE**

After passage by the Alleghany County Board of Commissioners, this Ordinance shall take effect on \_\_\_\_\_ 1, 2018 and enforcement efforts will begin \_\_\_\_\_ 1, 2018.



# WARNING!

THIS PROPERTY IS IN VIOLATION  
OF THE GARBAGE ORDINANCE  
OF ALLEGHANY COUNTY.

THIS PROPERTY HAS BEEN  
DETERMINED TO BE UNSAFE.

THIS PROPERTY IS IN VIOLATION  
AS:

- A SOLID WASTE VIOLATION
  
- A GARBAGE VIOLATION