

Article 1. TITLE

BEAUTIFICATION ORDINANCE FOR ALLEGHANY COUNTY, NORTH CAROLINA

Article 1. AUTHORITY and PURPOSE.

This Ordinance is enacted to enhanced the scenic beauty and to protect the health, safety, and general welfare of the people of Alleghany County pursuant to powers granted under NC General Statutes Sections 153A-132, 153A-136, and 153A-140, the Alleghany County Code, and 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 enhance the scenic beauty of Alleghany County and to promote tourism.
- B. To prevent injury and illness to occupants of property and the public and to remove public nuisances.
- C. To provide countywide standards for the abatement of public nuisances and to ensure proper actions are taken to abate public nuisances.
- D. To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public nuisances.

Article 2. JURISDICTION

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

Farm Exemption -- This ordinance shall not regulate property being actively used as a bona fide farm which is any tract of land containing at least ten (10) acres which is used for dairying or for the raising of agricultural products, forest products, Christmas trees, 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.

Article 3. DEFINITIONS

1. **Abatement** means the proper removal and/or containment of substances or materials hazardous to humans and/or the environment. 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. **Department** means the County Department responsible for enforcing this ordinance (or any designee or contractor enforcing this ordinance) and may be referred to as “the Department”.
6. **Junk** means litter, debris, waste materials of any kind, dead animals, used or unserviceable automobile and machinery parts, used and non-functional furniture and appliances, and used and non-functional tools, equipment, and implements, but shall not include compost piles for normal, personal or non-commercial use, in their proper location.
7. **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.
8. **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.
9. **Property** means publicly or privately owned real property including parcels of land, buildings or structures.
10. **Property agent** means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.
11. **Public nuisance** means 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 unremediated 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. Any violation of this Beautification Ordinance may be deemed a public nuisance.
12. **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.

Article 4. GENERAL PROVISIONS

Nuisance Conditions

Unlawful Conditions Enumerated. The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety and general welfare of the inhabitants of the County and are found, deemed and declared to be public nuisances wherever the conditions may exist and the creation, maintenance or failure to abate any nuisances is hereby declare unlawful:

1. Any accumulation of trash and/or garbage which is the result of the absence of trash or garbage containers, or overflowing or improperly closed trash or garbage containers;
2. Any accumulation of garbage, rubbish, trash, deceased farm animals 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, mosquitoes, or vermin detrimental to the public health.
3. The open storage of any discarded freezer, furniture, refrigerator, stove, glass, building materials, building rubbish or similar items.
4. Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is unsightly or hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the Department can reasonably determine that there is a likelihood of personal or property injury.

Article 5. ADMINISTRATION

Alleghany County Ordinances. Except where otherwise specified, this Ordinance is subject to all provisions of the Alleghany County Code.

Declaration as a public nuisance.

A. It shall be the duty of the Department or its designee to determine whether or not a public nuisance exists.

B. 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 public nuisance pursuant to a memorandum of understanding with the Appalachian Regional Health Department.

Modifications to or dismissal of the public nuisance declaration.

A. The Department may modify conditions of the declaration or dismiss the declaration of a public nuisance.

B. Such modifications or dismissal shall occur only after the Department has confirmed that the violation no longer exists.

C. 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.

D. 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.

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 Ordinance.

Article 6. INVESTIGATION AND RESPONSE TO A PUBLIC NUISANCE COMPLAINT

Form of Complaint. Public nuisances complaints can be submitted by any Alleghany County citizen. Said complaints must be submitted in writing by delivering a signed letter to the County Manager or Zoning Officer. The Alleghany County website will have a submission form for complaints. A citizen may complete and print the complaint form, sign it and deliver to either the County Manager's office or Zoning Officer's office.

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 certified mail, or by an officer authorized to serve a warrant and contain the following:

A. Property location by street address, parcel identification number, or other property description.

B. Information identifying the nature of the public nuisance at the property.

C. A summary of the owner's and occupant's responsibilities under this Ordinance.

D. Specific orders for abatement or remediation of the public nuisance.

E. A date for completion of the abatement not to exceed thirty 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 health and safety. In such cases, the reason for a shortened abatement period shall be specified.

F. 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.

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 thirty days, 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.

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 and that entry is prohibited unless authorized by the Department or the law enforcement Department posting the sign. Any person other than the Department 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 7. COUNTY ABATES PUBLIC NUISANCE

If the owner, property agent or occupant, fails or neglects to comply with the requirements in the notice provided under Article 6 of this Ordinance, 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 Section 6 of this Ordinance.

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 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 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 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 and/or an 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 Clerk to the Alleghany County Board of Commissioners or the Alleghany 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 6.

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

Any person who violates this Ordinance, 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 Class 3 Misdemeanor, and upon conviction thereof shall be punished as provided by law. Each day of violation constitutes a separate offense.

Civil Remedies. In the event of a violation or threat of violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, 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 Ordinance may seek costs and expenditures, including staff time and attorneys' fees.

Citations. Whenever the Department discovers a violation of this Ordinance, 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.

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 Allegheny County Board of Commissioners, this Ordinance shall take effect on January 1, 2018 and enforcement efforts will begin April 1, 2018.

WARNING!

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

THIS PROPERTY HAS BEEN
DETERMINED TO BE UNSAFE.

THIS PROPERTY IS IN VIOLATION
AS:

A HARBORAGE FOR VERMIN

A SOLID WASTE VIOLATION

AN ENVIRONMENTAL NUISANCE