

NUISANCE ORDINANCE



TOWN OF SEVEN DEVILS NORTH CAROLINA

*Adopted: November 14, 2006
Amended: December 14, 2009, October 8, 2012*

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ARTICLE 1 – TITLE AND PURPOSE

1.1 Short Title

This Ordinance shall be known and may be cited as the Town of Seven Devils Nuisance Ordinance and may be referred to as the Nuisance Ordinance.

1.2 Purpose

The purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the Town of Seven Devils, to ensure the humane treatment of animals, to establish periods of time each day during which the quiet of residential life is preserved, and to provide for the abatement of nuisances including, but not limited to, nuisances created by the accumulation of refuse and the parking or abandonment of vehicles, equipment or trailers.

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ARTICLE 2 – AUTHORITY AND JURISDICTION

2.1 Authority

The Town of Seven Devils is empowered to enact and enforce the provisions of this Ordinance by North Carolina General Statutes Chapter 160A, Article 8, Sections 174 – 205.

2.2 Jurisdiction

The provisions of this Ordinance shall apply throughout the Town of Seven Devils corporate limits and any extraterritorial jurisdictions, as may be modified from time to time.

2.3 Severability

Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not effect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

2.4 Conflicting Ordinances

All other Ordinances of the Town of Seven Devils that are in conflict with this Ordinance, this shall supersede the other Ordinance.

2.5 Conflicting Sections within this Ordinance

If there are any conflicts between any sections of this Ordinance, the more stringent section shall take precedence. Furthermore, a more specific section shall take precedence over a more general section.

2.6 Waivers

Where strict adherence to the provisions of this Ordinance would cause an unnecessary hardship, the Town Council may authorize a waiver to the terms of this Ordinance only to the extent that is absolutely necessary and not to the extent which would violate the intent of this Ordinance.

2.7 Amendments

The Town Council may from time to time amend the terms of this Ordinance.

2.8 Application

It is not intended that this Ordinance repeals, abrogates, annuls, impairs, or interferes with any existing easements, covenants, deed restrictions, agreements, rules, or regulations previously adopted or issued pursuant to law. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

2.9 Abridgement or Modification of Rules

- 1) No promise, agreement, or representation of any employee of the Town shall be binding upon the Town except as it shall have been agreed upon in writing, signed, and accepted by the Town.
- 2) No modification of any of the rules and regulations shall be made by any agent of the Town.
- 3) Acceptance by the Town may only be accomplished by a majority vote of the Town Council sitting in open session.

2.10 Effective Date

The provisions of this Ordinance shall become effective on November 14, 2006, amended October 8, 2012.

ARTICLE 3 - DEFINITIONS

3.1 Word Interpretation

For the purpose of this ordinance, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word “shall” is mandatory and not discretionary, while the word “may” is permissive.

3.2 Definitions

Abatement: The removal, stoppage, prostration, or destruction of that which causes or constitutes a menace, whether by breaking or pulling it down, or otherwise destroying it, or effacing it.

Owner: The owner of record based on the County Assessor’s record or any person with the legal, financial, or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.

Property: Any real property, premises, structure or location on which a public nuisance is alleged to exist.

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ARTICLE 4 – ANIMAL CONTROL

4.1 Adoption of Watauga County Animal Control Ordinance

With the adoption of this Ordinance, the Town of Seven Devils hereby adopts the Watauga County Animal Control Ordinance. Provisions and enforcement shall be as described therein except that Town of Seven Devils Public Safety personnel have the right but not the obligation to administer the following provisions dealing with public nuisance animals.

4.2 Definition -- Public Nuisance Animal

Public nuisance animal means any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property. The term “public nuisance animal” shall include but not be limited to:

- 1) Any animal that is repeatedly found running at large;
- 2) Any animal in any section of a public park or public area unless the animal is at heel or is controlled by a leash or similar restraint;
- 3) Any animal that damages, soils, defiles, or defecates on any property other than that of its owner;
- 4) Any animal that makes disturbing and/or unnecessarily loud noises, including, but not limited to, continued and repeated howling, barking, whining, or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others;
- 5) Any animal that causes fouling of the air by noxious or offensive odors and thereby creates unreasonable annoyance or discomfort to neighbors or to the peace and quiet of the Town;
- 6) Any animal in heat that is not confined so as to prevent attraction or contact with other animals;
- 7) Any animal, whether or not on the property of its owner, that without provocation molests, attacks, or otherwise interferes with the freedom of movement of persons;
- 8) Any animal that attacks domestic animals;
- 9) Any animal that is offensive or dangerous to the public health, safety or welfare by virtue of the number of animals maintained at a single residence or the inadequacy of the facilities.
- 10) An animal whose owner does not remove its feces from property other than its owner’s, including Town of Seven Devils property and rights-of-way.

4.3 Abatement

The Town of Seven Devils may abate such nuisance in accordance with Article 10, by removing the animal from the Town, or by having the Watauga County Animal Control Office remove said animal

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ARTICLE 5 – UNREASONABLE AND DISTURBING NOISES

5.1 Prohibited Noises

The following acts are specifically declared to be unreasonably loud, annoying, frightening, disturbing or unnecessary noise, the emission of which shall be unlawful. Such enumeration shall not be deemed to be exclusive.

- 1) *Horns, Signal Devices, Gongs, Sirens and Steam Whistles* except as a danger signal.
- 2) *Motor Vehicle* lacking a muffler or so out of repair, so loaded, or operated in such a manner as to create loud or unnecessary grating or grinding.
- 3) *Loudspeakers, drums, or other instruments or devices* for the purpose of attracting attention to any performance, show, sale, or display of merchandise.
- 4) *Firearms* except by permit from the Department of Public Safety.
- 5) *Airplanes* creating excessive noise by stunting, diving, or otherwise operating an airplane for the purpose of advertising or otherwise.
- 6) *Amplified sound from any source* that is produced with such volume as to annoy or disturb the quiet, comfort or repose of any person, particularly between the hours of 10 pm and 7 am.
- 7) *Shouting, yelling, or crying* of any persons or group of persons that disturbs the peace and quiet of the Town.

5.2 Noises permitted only during certain hours

The following sounds impacting residential life are specifically declared to be unreasonably loud, annoying, frightening, disturbing or unnecessary noise, the emission of which shall be unlawful except during the times specifically listed. Such enumeration shall not be deemed to be exclusive.

5.2.1 Permitted between 7 am and 8 pm Monday through Saturday:

- 1) Construction, erection (including excavating), demolition, alteration, or repair of any building or other structure. All equipment used in such work must be operated according to manufacturers' specifications and with all standard equipment, manufacturer's mufflers, and noise equipment in use and in proper operating condition. The Town Manager, Department of Public Safety, or Building Inspector / Zoning Administrator may permit emergency work in the preservation of public health or safety at any time when, in their opinion, such work will not create objectionable noise.
- 2) Refuse collection machinery.

5.2.2 Permitted between 7 am and 8 pm Monday through Saturday and between noon and nightfall on Sunday:

- 1) *Off-road vehicles* on private property. All vehicles must be operated according to manufacturers' specifications and with all standard equipment, manufacturer's mufflers, and noise equipment in use and in

proper operating condition. Off-road vehicles are not permitted on Town of Seven Devils property or rights-of-way.

- 2) *Lawn mowers and other domestic tools* when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition.

5.3 Exemptions

The following are exempt from the provisions of this section:

- 1) Sound emanating from scheduled outdoor athletic events.
- 2) Sound of safety signals, warning devices, and emergency pressure valves
- 3) All school and church bells. For purposes of this subsection the term "bells" shall include all electronic devices or artificial sound reproduction systems intended to sound like bells.
- 4) Noise resulting from parades, lawful picketing or other public demonstrations protected by the US Constitution or federal law, or for which local permit has been granted by the Town, provided such activity is of a temporary duration lasting no longer than two (2) hours during any twenty-four (24) hour period. Regulation of noise emanating from activities under the permit shall be according to the conditions and limits stated in this section and according to any additional conditions stated on the permit.
- 5) Unamplified and amplified sound at street fairs or community concerts conducted, sponsored or sanctioned by the Town.
- 6) All noises coming from the normal operations of properly equipped aircraft (not including scale model aircraft).
- 7) Noise from noisemakers on holidays and fireworks on holidays or at times allowed under a pyrotechnics permit issued pursuant to N.C.G.S. 14-413.
- 8) Agricultural equipment when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition.
- 9) Practice sessions or performances by marching bands.
- 10) Noise created by a snow-making device, so long as such device is operated properly and in the scope of a lawful business.
- 11) Noise emanating from any authorized emergency vehicle or emergency work.

ARTICLE 6 – BRUSH, WASTE, GARBAGE AND REFUSE

6.1 Construction Site

The contractor and property owner shall take whatever steps are required to ensure that no debris from the site is blown or transported to adjacent properties and shall abide by the Town of Seven Devils Construction Ordinance Sections 3.3.4 (Site Appearance) and Section 3.3.5 (Debris Containment and Clean Up).

6.2 Dumping or Littering on Private Property

It shall be unlawful for any person, firm, corporation or other entity to place, throw, discard, or leave or cause to be placed, thrown, discarded or left any trash, refuse or garbage on any property not owned by him without the consent of the owner, occupant or lessee thereof.

6.3 Dumping or Littering on Public Property

It shall be unlawful for any person, firm, corporation or other entity to place, throw, discard, or leave or cause to be placed, thrown, discarded or left any trash, refuse or garbage on any public street, public right of way, sidewalk within the Town, on any property owned and operated by the Town, or any other public property, except in properly designated receptacles.

6.4 Transportation of Solid Wastes within the Town

No person shall transport or cause to be transported any solid wastes on the public streets of the Town unless the solid wastes are so secured that no solid wastes escape from the transporting vehicle. In addition, any garbage so transported shall be carried in closed containers that prevent the escape of noxious odors or liquids. This applies to commercial garbage services with which residents may contract as well as to the private transportation of solid waste to the Watauga County Recycling Center or other site.

6.5 Burning or Burying Waste

No person, firm, corporation, or other entity shall burn or cause to be burned any brush, waste, garbage or refuse without a valid burning permit having been obtained from the Town of Seven Devils. No burning permits shall be issued on any weekend, holiday or evening. The recipient of a burning permit shall exercise all reasonable precautions to contain the fire, and all permitted fires must be extinguished by sunset.

No person may bury or cause to be buried any solid waste for purposes of disposal.

6.6 Adequate Waste Receptacles for Refuse Placed Outside for Pickup

Any waste other than brush placed outside a building (e.g., commercial building, residence, or accessory building) for pickup shall meet the requirements of this Article and where addressed, the Uniform Development Ordinance (UDO). Trash receptacles must be sufficient to ensure that the contents cannot be removed from the trash receptacles by wind, animals, or other causes. Fines for failure to comply with this Article will be levied in accordance with this Article 11 – Enforcement, of the Nuisance Ordinance.

- A. The owner of every premises shall be responsible for providing adequate solid waste receptacles in accordance with this Article to store the solid waste generated by activities taking place on those premises between scheduled pickups (typically storage for seven-day's refuse).
- B. Every premise shall have enough trash receptacles as specified in (E) below to accommodate the maximum amount of trash generated by the property in a seven-day period. If the property owner does not utilize a commercial trash removal service (no roadside pickup and no storage of trash outside of a building), he or she, is exempt from this requirement.
- C. An exemption is not permitted for rental properties. Rental properties must have adequate trash receptacles as needed and specified in (D) and (E) below.
- D. Under no circumstances may garbage be left by the roadside for pickup without being fully contained inside a trash receptacle as described in (E) below.
- E. The receptacles required by this Article shall be bear (and other animal) resistant, made of galvanized metal, plastic, rubber or other material resistant to rust, corrosion or rapid deterioration. Each receptacle shall be watertight. Each receptacle shall be covered with a tight-fitting cover or lid at all times, which shall be designed in such a manner so as to prevent removal of contents by a bear or any other animal.
- F. Trash receptacles shall not be placed at the roadside for pickup before 6 a.m. on the scheduled pickup date unless contained in a permanent/semi-permanent structure built to store trash receptacles. Trash receptacles must be removed from the roadside and stored out of sight no later than the end of the day of pickup. Permanent/semi-permanent structures built to store trash receptacles must be placed no closer than ten feet from the edge of the road surface.
- G. Multi-family residential structures must provide a dumpster as specified in the Uniform Development Ordinance (UDO) in Article XII, Section 12.07.
- H. No person may damage, displace or otherwise interfere with solid waste receptacles or solid wastes stored or prepared for collection

except with the consent of the owner, lessee or occupant of the premises where those receptacles or solid wastes are located. No one shall place refuse in trash receptacles owned by another person.

Property owners, whether complying with this Article or not, whose trash is scattered by animals, wind, or any other cause shall be charged a \$100 (per occurrence) cleanup fee by the Town of Seven Devils. Additionally, the Town shall notify the property owner of the required cleanup by telephone or letter.

Failure of a property owner to provide adequate trash receptacle(s) as required by this Article, resulting in the subsequent removal of trash by animals, weather, or other means, so as to generate a health hazard or unsightly appearance, shall be guilty of a *trash violation*.

Upon occurrence of a *trash violation*, the owner will be notified by telephone, if possible, and sent a letter, return receipt requested. The Town will immediately clean up the trash and bill the property owner \$100 cleanup fee (as stated above) and send an invoice for the cleanup. Additionally, if the cleanup was required because the property owner failed to comply with this Article, the owner will be subject to a \$500 fine as described in Article 11 – Enforcement of the Nuisance Ordinance.

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ARTICLE 7 – NUISANCE VEHICLES

7.1 Definition

Nuisance motor vehicle or *nuisance vehicle* means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, or an attractive nuisance, and thus is unlawful. The term “Nuisance Vehicle” includes, but is not limited to, vehicles found to be:

- 1) A vehicle, equipment, or equipment trailer parked for more than 96 hours on the public right of way without permission from the Zoning Administrator,
- 2) A breeding ground or harbor for mosquitoes, other insects, rats, snakes, or other pests,
- 3) A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height,
- 4) A point of collection of pools or ponds of water,
- 5) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor,
- 6) One that has areas of confinement that cannot be opened from the inside, such as trunks, hoods, etc,
- 7) So situated or located that there is a danger of its falling or turning over,
- 8) One that is parked so as to prevent safe passage of any vehicle on the public road,
- 9) One that is a point of collection of garbage, debris, food waste, animal waste, or any other kind of rotten or putrescible matter,
- 10) One that has sharp parts that are jagged or contain sharp edges of metal or glass,
- 11) One that might act as an attraction to children at play and that might result in their injury or illness, or
- 12) Any other vehicle specifically declared a health and safety hazard or a public nuisance by the Town Council.

7.2 Authorized Removal of Nuisance Vehicle

Upon investigation, the Department of Public Safety or other authorizing official may determine and declare that a vehicle is a nuisance vehicle as defined above, and order the vehicle removed under the authority of General Statute 160A-175 and General Statute 160A-193.

Before a nuisance vehicle may be removed, the Town shall provide the owner or, if applicable, the property owner where the nuisance vehicle is located with notice of the suspected violation, a hearing, and an appeal (if desired) as described in Article 10.

7.3 Exceptions to Prior Notice Requirement

The requirement that notice be given prior to the removal of a nuisance motor vehicle may, as determined by the Enforcement Officer or his/her designee, be omitted in those circumstances in which 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 Town Manager or his designee in the appropriate daily records.

Circumstances justifying the removal of vehicles without prior notice include, but are not limited to:

(a) Vehicles abandoned on the public roads. For vehicles left on the public roads, 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 a loading zone,
- (5) Parked in bus zones, or
- (6) Parked in violation of parking restrictions imposed under code sections.

(b) Other nuisance vehicles.

With respect to nuisance vehicles left on town-owned property other than public roads, and on private property, such vehicles may be removed without giving prior notice only in those circumstances in which the Enforcement Officer or his/her designee 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 and egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

7.4 Sale and Disposition of Unclaimed Vehicles

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

7.5 Protection against Criminal or Civil Liability

No person shall be held to answer in any civil or criminal action to any owner or other personal legally entitled to the possession of a nuisance vehicle for disposing of such vehicle as provided in this Ordinance.

7.6 Violations

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.

ARTICLE 8 – OTHER NUISANCES

8.1 Conditions Upon Property

The existence of any of the following conditions on any lot or parcel of land is hereby declared prejudicial to the public health, safety or welfare and to constitute a public nuisance. Such listing is not deemed to be an exclusive list of all conditions upon property that could constitute a public nuisance:

- 1) Any fire hazard.
- 2) Any accumulation of waste or other matter causing or threatening to cause the accumulation of stagnant water.
- 3) Any accumulation of waste or other matter causing or threatening to cause the inhabitation therein of mice, rats, snakes, or animals of any kind that are or may be dangerous or prejudicial to public health.
- 4) Any condition that violates the rules and regulations of the applicable county health department.
- 5) Any incomplete structure without a valid building permit.
- 6) Any condition that may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the Town.
- 7) Any property that is unsafe for occupancy, or use on, in, upon, or about or around the aforesaid property.
- 8) Any property that, by reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, depreciates the use and enjoyment of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.
- 9) Any growth of weedy plant material in excess of 18” on developed land (including construction sites and developed property).
- 10) Any other condition that is a menace, threat and/or hazard to the general health, safety, and welfare of the community.

8.2 Lighting

Lighting sources shall cause no direct light or glare upon adjacent property. Nor shall they constitute a hazard to motorists using public streets as determined by the Department of Public Safety.

Lighting installed in conformity with the Town of Seven Devils Zoning Ordinance shall be maintained in such a way that it continues to meet the standards of that Ordinance.

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ARTICLE 9 – FALSE ALARMS

9.1 Definition of False Alarm

False Alarm means activation of an alarm system that elicits a response by police, fire, or other emergency response units when no situation requiring such a response exists. The alarm is deemed false if the responding unit(s) find no evidence of unauthorized intrusion, or attempted unauthorized intrusion, robbery or attempted robbery, evidence of fire or medical emergency. False alarms include, but are not limited to:

- 1) Error or mistake: Any action by any person, firm or corporation, association, or other entity or agency thereof, owning or operating any dwelling, building, or place, which results in the activation of any alarm system when no emergency exists.
- 2) Malfunction: Any activation of any alarm system caused by a flaw in the normal operation, design, installation, or maintenance of the system, by faulty equipment, or by a change in the environment or premises upon, or within which the alarm system is operating.
- 3) Intentional misuse: Any activation of an alarm system when one knows, has reason to know, or should have known no emergency is in progress.
- 4) Testing: Failure to notify alarm monitoring service of testing. Any alarm transmitted to Public Safety while alarm is being tested by personnel without notifying the alarm service of test status.

An alarm will not be considered to be a false alarm if determined by the responding unit that the alarm was caused by:

- 1) Natural or manmade catastrophe or an act of God. Such events include, but are not limited to tornadoes, floods, earthquakes or similarly violent conditions or adverse weather conditions.
- 2) The testing of a local/audible alarm system by a licensed alarm business, agent, or employee who is present at the premises while servicing, repairing, or installing the alarm when the agent or user has contacted the alarm company and informed them of the test.
- 3) Activation by other extraordinary circumstances not reasonably subject to control by the alarm user.

9.2 Excessive False Alarms

Three (3) or more false alarms within the same calendar year is excessive.

9.3 Civil Penalties

Excessive false alarms for any alarm system within a calendar year shall subject the alarm user to a civil penalty according to the following schedule:

<u>Number of False Alarms:</u>	<u>Amount of Civil Penalty:</u>
1 or 2	Written Notice
3 or 4	\$100 each
5 or 6	\$200 each
7 or 8	\$300 each
9	\$350
10 or more	\$500 each

Article 10 – FIRE PITS AND RECREATIONAL FIRES

10.1 Fire Danger

The danger of fire in the Town of Seven Devils is of particular concern because of:

1. the close proximity of houses to one another
2. the fact that fires travels much faster uphill than on level ground
3. the fact that there is only one main road into and out of Seven Devils
4. the fact that many houses are in the short-term (vacation) rental program and more and more want to build recreational fires
5. the fact that many fires are not totally extinguished before the fire keeper retires for the evening or leaves after a temporary stay at a house

10.2 Building of fires and construction of fire pits:

UL approved fireplaces/appliances are exempt from the following requirements.

1. Recreational fires must be in fire pit or receptacle constructed of non-combustible material.
2. Fire pits must be no larger than three feet in diameter and the firebox must be at least two feet deep. *Fire pit owners are responsible for cleaning the fire pit out as needed to maintain a proper firebox depth of two feet.* The fire pit must be covered with an appropriate spark arrestor (screen).
3. Fires must be no larger than three feet in diameter and two feet high (no bonfires).
4. Use only clean dry wood: no brush, leaves, trash, construction material, wet wood, animal carcasses, rubber, or tires.
5. Do not use any flammable liquids to ignite the fire.
6. Fireplace must be 25 feet away from any combustibles: not on decks or near structures.
7. Fireplace or fire pit must not be within the setback area/line of any property.
8. Fire must be fully extinguished by 1 AM. Fully extinguished means that the ashes are cold prior to leaving the fire.
9. Fire must be supervised at all times and cannot be started prior to 10AM.
10. Must have a garden hose stretched to the fireplace/fire pit or a fire extinguisher near the fireplace. You must have the means to extinguish the fire on hand at all times.
11. If we receive complaints of smoke or embers and have to respond we will make you extinguish the fire for the night.
12. If we receive multiple calls to your house or you do not abide by the above, we will issue a citation and possible fines.

10.3 Banning of Fires

The Fire Chief, Police Chief, or Town Manger has the right to declare a complete ban on burning if conditions dictate that a ban is necessary.

10.4 Abatement

The Town of Seven Devils may immediately abate violations of this Article by requiring fires to be extinguished by the property owner/renter/occupant. If the respective party does not extinguish the fire, the Town of Seven Devils is authorized to immediately extinguish any fire in violation of this Article.

10.5 Violations

Violations of this Article are subject to the enforcement actions as recorded in Article 11 – Enforcement.

ARTICLE 11 -- ENFORCEMENT

11.1 Enforcement Officers

The Town Manager, the Public Works Director, the Department of Public Safety and/or the Zoning Administrator / Building Inspector or their designee shall have the authority to enforce the provisions of this Ordinance.

Upon notice from any person of the possible existence of a violation of this Ordinance, the Town of Seven Devils Town Manager, Public Works Director, Zoning Officer, Public Safety Officer, or designee shall cause to be made such investigations as may be necessary to determine whether conditions exist that constitute a violation of this Ordinance.

Furthermore, members of the Department of Public Safety, Department of Public Works, and Zoning Administration / Building Inspection are directed during their normal travels through the Town to be alert to apparent violations of this Ordinance and report those violations to the appropriate Town employee.

11.2 Authority

The Town of Seven Devils is empowered to enforce the provisions of this Ordinance by North Carolina General Statutes Chapter 160A, Article 8.

11.3 Penalties

Any person, firm or corporation that creates, maintains, or allows a public nuisance shall be guilty of a Class 3 misdemeanor and, pursuant to North Carolina General Statute 14-4, may be subject to a fine of not more than five hundred dollars (\$500) for each violation. Each and every day that any person, firm or corporation shall continue such conduct in violation of this Ordinance shall constitute a distinct and separate violation.

11.4 Abatement

Pursuant to General Statutes 160A-175 and 160A-193, this Ordinance may be enforced by injunction or order of abatement.

11.5 Hearing

If it appears that a violation may exist, the Town Manager may cause to be delivered or mailed by registered letter, return receipt requested to the owner of the property upon which a violation may exist a notice stating the reasons a violation may exist and that a hearing will be held before the Town Manager at a place therein fixed, not less than seven (7) nor more than thirty (30) days after the delivery or mailing of the notice. The owner or any other party with an interest in the property may attend the hearing and may give evidence at the time and place fixed in the notice.

11.6 Order of Abatement

Following the hearing, the Town Manager shall decide whether or not there is a violation of this Ordinance. If the Town Manager decides that a violation does exist, the Town Manager shall notify the owner of the premises in question in writing by registered letter, return receipt requested of the conditions constituting such violation and shall order the prompt abatement thereof within thirty (30) days from the receipt of such written notice

11.7 Appeal to Town Council

Any decision of the Town Manager may be appealed to the Town Council of the Town of Seven Devils. Such appeal must be submitted in writing within ten (10) days after receipt of the decision of the Town Manager. The filing of an appeal stays all enforcement proceedings until such time as the Town Council makes a final decision. The Town Council's decision shall be provided in writing by registered letter, return receipt requested. The filing of an appeal also suspends the tolling of the thirty-day (30) period set out in Section 7.9 Abatement by Owner.

11.8 Appeal to Superior Court

Any decision of the Town Council declaring a condition a nuisance may be appealed to the Superior Court of Watauga or Avery County. This appeal shall be in the form of a writ of certiorari and must be filed within thirty (30) days of the delivery of written notice of the Town Council's decision to the aggrieved party. A copy of the writ of certiorari shall be served upon the Town Manager of Seven Devils.

11.9 Abatement by Owner

Within thirty (30) calendar days after receiving a notice to abate a nuisance, the owner, agent of the owner, or individual in possession of the affected property shall remove and abate such nuisance. If this order of abatement is appealed to the Town Council, the thirty (30) day time period is suspended beginning the date the appeal is filed to the Town Council and ending thirty (30) days after the date the owner receives the written decision of the Town Council. At that time, the thirty (30) day time period will resume tolling, unless the owner has filed an appeal with the Superior Court of Watauga or Avery County. If the owner has filed a prompt appeal to the appropriate Superior Court, as set out above, the thirty (30) day time period will be suspended until the Court decides the case. If the appropriate Superior Court finds that there is a nuisance, the time period will resume tolling, and the owner or individual in possession will have to remove and abate the nuisance before the thirty (30) day time period ends.

Upon written application by the owner within the thirty (30) day period after the notice has been served, the Town Manager may grant fifteen (15) additional calendar days for the owner to effect the abatement of the public nuisance.

11.10 Abatement by the Town

If a public nuisance has not been abated by the expiration of time stated in the notice/order or within such additional time as the Town may grant, the

Department of Public Safety shall, pursuant to General Statute 160A-175, have the authority to enter upon the property and abate the public nuisance found thereon. In abating such nuisance, the Department of Public Safety may go to whatever extent may be necessary to complete the abatement of the public nuisance. If it is practical to salvage any material derived in the aforesaid abatement, the Town may sell the salvaged material at private or public sale at the best price available and shall keep an accounting of the proceeds thereof.

- (a) The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of a public nuisance by the Town shall be deposited to the general fund of the Town and any difference between the amount so received and the cost of the abatement may be levied as an assessment against the property in question by the Town and collected as any other assessment by the Town; however, the Town may use any other alternative collection method to recoup the deficit. If the proceeds of the sale of such salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the public nuisance was abated when a proper claim to the excess is established.
- (b) In abating a public nuisance, the Town Manager may call upon any of the other Town departments for whatever assistance shall be deemed necessary or may by private contract cause the abatement of the public nuisance.
- (c) The Town Manager shall, after completing the removal and abatement, file a statement of costs.

11.11 Cost of Removal Charged to Owner

As authorized by General Statute 160A-193, the actual cost incurred by the Town in abating, removing or otherwise remedying a nuisance shall be charged to the owner of such lot or parcel of land on which the nuisance is found or originates. The Town Manager shall mail a statement of charges by registered letter, return receipt requested to the owner or person in possession of said premises, who must pay such charges within thirty (30) days from the receipt thereof.

11.12 Liens

In the event that charges for the removal or abatement of a nuisance are not paid within thirty (30) days after the receipt of such statement as provided for in this Article, such charges shall become a lien upon the land or premises where the nuisance existed and shall be collected as unpaid taxes, pursuant to General Statute 160A-193.

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