

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 3, 2006

SUBJECT: Draft Nuisance Ordinance

ATTACHMENTS: Draft Nuisance Ordinance

SUMMARY OF REQUEST:

Through the recently adopted County Strategic Plan, the Board of Commissioners made enhanced code enforcement a priority. As part of this effort, the adoption of a new Nuisance Ordinance is proposed. A draft ordinance has been discussed at two public hearings. Changes have been incorporated into this attached revised draft. Deletions are noted with strike throughs and additions are in italics.

COUNTY MANAGER'S RECOMMENDATION/ACTION REQUIRED:

No specific action is recommended at this time. However, staff is prepared to present recommended changes and new suggestions for incorporation into the ordinance.

(Changes indicated by ~~strikethrough~~ for deletions and *italics* for additions)

DRAFT
PUBLIC NUISANCE ORDINANCE

"The Henderson County Board of Commissioners do ordain:"

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SECTION 1: PURPOSE.

1.01 Purpose. This Ordinance is enacted to protect the health, safety, and general welfare of the people of Henderson County pursuant to powers granted under NC General Statutes Chapter 153A, Henderson County Code, and subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted in the future.

1.02 Objectives. The principal objectives of this Ordinance are:

- A.** To prevent injury and illness to occupants of property and the public and to remove public nuisances.
- B.** To provide countywide standards for the abatement of public nuisances including, but not limited to solid waste, junked motor vehicles and abandoned manufactured homes.
- C.** To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public nuisances.
- D.** To ensure proper actions are taken to abate public nuisances.

SECTION 2: GENERAL PROVISIONS

2.01 Jurisdiction. This Ordinance shall apply to all property located in the Henderson County Zoning Jurisdiction and/or municipalities that request enforcement by interlocal agreement.

2.02 Exception. This ordinance shall not regulate property being actively used as a Bona Fide farm which is any tract of land containing at least three (3) acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry

and including facilities for the sale of such products from the premises where produced provided that, a farm shall not be construed to include commercial poultry and swine production, cattle feeder lots and furbearing animal farms.

2.01 Prohibitions. The creation or maintenance of a public nuisance is prohibited. The following are hereby expressly declared to be public nuisances:

A. Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.

B. An unsecured opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.

C. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent-proof container designed or reasonably adapted for such purpose, except for the immediate time preceding pick-up by a refuse hauler.

D. Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death. This provision shall not apply if the animals, birds, or fish are intended for human consumption.

E. Noxious and excessive ~~accumulation~~ *outdoor storage of any of the following items that create a public nuisance. No outdoor storage of any of the following shall be permitted in any zoning district.* Decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, farm implements, furnaces, home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all terrain vehicles, toys, bicycles, junk or any other substances in which flies, mosquitoes, other disease carrying insects, rodents or other vermin can harbor.

F. Accumulations of rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.

G. More than two junked motor vehicles and/or ~~one~~ *an* abandoned manufactured home as defined below or any structure that has become dangerous for further occupancy because of sanitary or structural defects.

H. Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, hookworm larvae or other insects, parasites or vermin.

I. Unnatural breeding grounds which support mosquito larvae and mosquitoes capable of carrying West Nile Virus, La Crosse Encephalitis Virus, or any other disease causing microorganism.

J. ~~Permanently setting up a Recreational Vehicle for longer than 6 months or the period of constructing or remodeling a home with current permits. Recreational Vehicles are intended to be moveable and should be used as temporary rather than permanent housing other than those properly approved in a Recreational Vehicle Park.~~

Use of a Recreational Vehicle as a primary residence without permitted electric, water, and sewerage connections shall not be permitted. Recreational vehicles shall not be used as storage.

K. *Permitted outdoor storage shall not be allowed in the front yard, shall not exceed one-third of the rear yard area, shall not be closer than ten feet to the side lot lines or an alley and shall be at least 15 feet from any street. Use of land for outdoor storage of*

items not related to property use shall not be permitted. Outdoor storage in conjunction with the business with a valid zoning permit must be screened from public right-of-way or residential property.

SECTION 3: DEFINITIONS. Definitions of words, phrases, and terms used in this Ordinance shall be those set forth in North Carolina Statutes Chapters 153A, Henderson County Code and this section.

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. **Abandoned Manufactured Home** means a manufactured home that *has not had legal power or was not properly connected to a permitted septic system and water supply in the last 6 months.*
~~both:~~
 - a. ~~Vacant and/or dangerous or in need of repair greater than 75% of its fair market value.~~
 - b. ~~Not occupied by the property owner or family member as a permanent residence~~
3. **Board of Commissioners** means the currently elected Henderson County Board of Commissioners and may be referred to as “the Board” or “the County Board”.
4. **County** means Henderson County.
5. **Development and Enforcement Services Department** means the County Department responsible for enforcing this ordinance and may be referred to as “the Department” or “DESD”.
6. **Junked Motor Vehicle** means an abandoned motor vehicle that *does not display a current license plate or vehicle registration.*
 - a. ~~Is partially dismantled or wrecked; or~~
 - b. ~~Cannot be self-propelled or moved in the manner in which it originally was intended to move; or~~
 - c. ~~has a fair market value of less than five hundred dollars (\$500.00); or~~
 - d. ~~Does not display a current license plate, registration and vehicle inspection.~~
7. **Junk** means litter, debris, waste materials or 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.
8. **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.
9. **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.
10. **Outdoor storage** means the accumulation or storage of disassembled, inoperable, or unlicensed motor vehicles or trucks, decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing materials, scrap metal, pallets, fuel storage containers, tools, tires and wheels, farm implements, furnaces,

~~home appliances, furniture, plumbing fixtures, construction materials, amusement park devices, metal, pipes, rubber, glass bottles, machinery, wood, brick, cement block, all terrain vehicles, toys, bicycles, junk or other unsightly debris shall be prohibited on any lot or parcel of land within the county limits of Henderson County except as set forth herein.~~

~~Notwithstanding the above, firewood, lawn and patio equipment may be stored outside in a neat and orderly manner.~~

~~No outside storage shall be permitted of equipment, appliances, or machinery which is not in operating condition or more than two junked motor vehicles.~~

~~Permitted outdoor storage shall not be allowed in the front yard, shall not exceed one-third of the rear yard area, shall not be closer than ten feet to the side lot lines or an alley and shall be at least 15 feet from any street.~~

~~These provisions shall not apply to the outdoor storage of agricultural equipment stored in the active pursuit of agriculture.~~

~~Use of land for outdoor storage of items not related to property use shall not be permitted. Outdoor storage in conjunction with the business with a valid zoning permit must be screened from public right of way or residential property. This subsection shall not apply to temporarily parking inoperable or disabled vehicles on the premises of the owner of such vehicles for the purpose of maintenance and repair. Temporary parking shall not exceed seven consecutive days.~~

11. **Park Model (Recreational Vehicle)** means a vehicle which is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is self-propelled or permanently towable by a light duty truck and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel, and seasonal use. Recreational vehicles are not subject to the Manufactured Home Construction and Safety Standards.
12. **Personal property** means all property other than that defined in 13, 16, and 17 of this section that is subject to ownership.
13. **Property** means publicly or privately owned real property including parcels of land, buildings or structures.
14. **Property agent** means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.
15. **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 unheeded due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals, or other means of transmission or infections.
16. **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.

17. **Structure** means a dwelling or building, either fixed or temporary.

SECTION 4: ADMINISTRATION.

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

4.03 Declaration as a public nuisance.

- A.** It shall be the duty of the DESD 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, a zoning enforcement officer may determine that a structure, property, or portion of a property constitutes a public nuisance pursuant to a memorandum of understanding with the Henderson County Department of Public Health.

4.04 Modifications to or dismissal of the public nuisance declaration.

- A.** The DESD may modify conditions of the declaration or dismiss the declaration of a public nuisance.
- B.** Such modifications or dismissal shall occur only after the DESD has confirmed that the violation no longer exists.
- C.** The DESD 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 DESD for an extension of time to complete abatement activities. The DESD may grant such extension if the extension does not increase the risk to public or safety and is deemed appropriate by the DESD. An extension will be no longer than 30 days and must show substantial improvement or the completion of that deadline will result in penalty.

4.05 Access to premises and records. The owner or occupant shall, upon the request of the DESD and after proper identification, permit access to all parts of the site or structure as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this Ordinance. *If the occupant will not permit entry upon the property, the DESD shall complete the requirements of an Administrative Search Warrant in order to inspect the complaint.*

4.06 Interference with the DESD. No person shall in any way interfere with or hinder the DESD in the performance of duties, or refuse the DESD access to gather information necessary to ascertain compliance with this Ordinance.

SECTION 5: INVESTIGATION AND RESPONSE TO A PUBLIC NUISANCE.

5.01 DESD owner notification. Upon declaration of a public nuisance, the DESD shall give written notice of its determination and orders to abate the nuisance to the owner, occupant and property agent, if applicable. This notice shall be served in person, by regular mail, or by an officer authorized to serve a warrant and contain the following:

- 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 DESD's further determination that the immediate abatement is necessary to protect public and safety. In such cases, the reason for a shortened abatement period shall be specified.
- F. Information regarding a right of appeal as provided in section 8 of this Ordinance and that, unless the threat to public is abated or removed in accordance with the terms of the notice, the DESD will have the public nuisance abated or removed at the expense of the owner under the provisions of North Carolina Statutes 153A, this Ordinance, or other applicable state or local law.

5.02 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 DESD 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 DESD will have the public nuisance abated or removed at the expense of the owner under the provisions of North Carolina Statutes 153A, this Ordinance, or other applicable state or local law.

5.03 Public notification. The DESD shall provide information in writing about the public nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

- A. Child Protection Division in situations of potential child maltreatment or endangerment,
- B. Adult Protection Division in situations of potential vulnerable adult maltreatment or endangerment,
- C. Neighbors in close proximity likely to be affected by the conditions found at the site,
- D. The local municipal clerk,
- E. Local Law Enforcement Officer, or
- F. Other state and local authorities that may have public or environmental protection responsibilities.

5.04 Warning sign. The DESD 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 DESD or the law enforcement department posting the sign. Any person other than the DESD 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.

5.05 DESD abates public nuisance. If the owner, property agent or occupant, fails or neglects to comply with the requirements in the notice provided under Section 5.01 of this Ordinance, then the DESD shall abate or remediate the public nuisance described in the notice. The DESD will recoup such costs as necessary to abate the public nuisance as provided in Section 6 of this Ordinance.

5.06 Vacating the public nuisance order. Upon DESD verification of proper abatement, remediation or removal at the site, the DESD shall issue written notice to those persons served notice under section 5.01 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 section 5.03 of this Ordinance.

SECTION 6: COSTS AND REIMBURSEMENTS.

6.01 Recovery of costs.

A. If the DESD is required to remove, abate or remediate a public nuisance; the County may recover costs incurred in removal, abatement or remediation in a civil action or, at the discretion of the County Board. 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. For motor vehicles, the County will use the Kelley Blue Book value or equivalent in determining market value.

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

6.02 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.

SECTION 7: APPEALS.

7.01 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 DESD, by filing a written request with the Henderson County Zoning Board of Adjustment for an administrative hearing 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 section 5.02.

7.02 Hearing. If any owner or occupant makes a written request to the Zoning Board of Adjustment for hearing, such hearing shall be held before the Zoning Board of Adjustment at their next regular meeting.

7.03 Schedule. The hearing shall be held no later than 15 calendar days after the date of service of the request for a hearing was received unless the appellant requests an extension of time. If an extension is requested, the hearing shall be held no later than 30 calendar days after the date of service of the request for a hearing.

7.04 Notice. The DESD 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.

7.05 Witnesses and Evidence. All parties shall have full opportunity to respond to and present evidence and witnesses.

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

7.07 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.

7.08 Record of Hearing. The hearing shall be recorded and the minutes of the meeting shall be approved by the Zoning Board of Adjustment at their next scheduled meeting.

7.09 Notice of Decision. The decision of the **Zoning Board of Adjustment** shall be issued within ten calendar days following the hearing. Unless otherwise provided by law, the decision of the Zoning Board of Adjustment shall constitute the final decision unless the County Board modifies or rejects it as provided in section 7.10.

7.10 Further Appellate Rights. Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than thirty calendar days after the party receives the final decision from the County Board.

SECTION 8: DISCLAIMER OF LIABILITY. Liability on the part of, or a cause of action against, Henderson County or any officer, employee or agent thereof for any

damages that may result from administration and enforcement of this Ordinance shall be limited as provided by North Carolina Statutes 153A.

SECTION 9: FEES. Fees for the DESD 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 Henderson County Board of Commissioners.

SECTION 10: PENALTIES.

10.01 Misdemeanor. 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 DESD, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. Each day of violation constitutes a separate offense. Violation of this ordinance shall be prosecuted under Henderson County Code § 1-14 Violations and Penalties A. Criminal Penalties.

10.02 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. Violation of this ordinance shall be prosecuted under Henderson County Code § 1-14 Violations and Penalties B. Civil Penalties.

10.03 Citations. Whenever the DESD 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.

SECTION 11: SEPARABILITY. If any provision of this Ordinance is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance.

SECTION 12: CAPTIONS. The captions printed in boldfaced type before the sections of this Ordinance are mere catch words to indicate the content of the section.

SECTION 13: EFFECTIVE DATE. After passage by the Henderson County Board of Commissioners, this Ordinance shall take effect on January 1, 2006.

WARNING!

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

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

THIS PROPERTY IS IN VIOLATION AS:

- A HARBORAGE FOR VERMIN
- A SOLID WASTE VIOLATION
- A JUNKYARD BECAUSE OF JUNKED CARS, ABANDONED MANUFACTURED HOMES, OR OUTDOOR STORAGE
- AN ENVIRONMENTAL NUISANCE

§ 1-1. Henderson County Public Nuisance