

other enforcement officer authorized by the city manager.

The penalty shall be paid to the tax collector of the City of Morganton within seventy-two (72) hours from the time of issuance of the written citation.

(c) Each day's continuing violation shall be a separate and distinct offense.

(d) In addition to the penalties imposed under subsections (a) and (b) above, the provisions of this chapter may also be enforced through equitable remedies issued by a court of competent jurisdiction including injunction and order of abatement or any other remedy permitted under this Code.

(e) This chapter may be enforced by any one, all or a combination of the remedies authorized herein or in section 1-1005 of the Code or under the general laws of the State of North Carolina. (Ord. No. 90-11, § 1(20), 3-12-90)

## CHAPTER 4. NUISANCES RELATING TO PROPERTY

- § 8-4001. Findings and policy.
- § 8-4002. Definition of nuisance.
- § 8-4003. All nuisances prohibited.
- § 8-4004. Investigation.
- § 8-4005. Summary abatement.
- § 8-4006. Other removal or abatement.
- § 8-4007. Order of abatement.
- § 8-4008. City abatement.
- § 8-4009. Other nuisances.
- § 8-4010. Other methods of enforcement.

### Sec. 8-4001. Findings and policy.

(a) *Findings.* The City Council finds as a fact that there are not only vacant lots and parcels of land in the City but also occupied parcels of land that are overgrown with weeds, vines and other noxious growth; have become a collection place for trash, garbage, debris, junk or other undesirable materials; are likely to become the breeding place for rats, mice, mosquitoes, flies and have unsafe conditions. Many of these same lots and parcels of land also have conditions located thereon that are unsightly, unattractive and contribute measurably to visual blight within the City.

The City Council further finds as a fact that the conditions described above materially affect one or more of the following:

(1) The safety of not only the citizens of Morganton but individuals who may be visiting within the City;

(2) The general health and welfare of the citizens of Morganton and those individuals who are visiting within the City;

(3) The health and safety of children who are attracted to such conditions and who are vulnerable to conditions which lead to accidents and injuries;

(4) The quality of urban attractiveness and the overall aesthetic appearance of the City;

(5) The protection of property values nearby to such conditions as well as the property values throughout the City;

(6) The ability of the City to attract new industry and to create new and better paying jobs including the opportunity for the full economic development of the City;

(7) The comfort, happiness and emotional stability of owners and occupants of property in the vicinity of dangerous or unattractive conditions and nuisances; or the full use, ownership and enjoyment of property in the vicinity of such conditions; and/or

(8) The right to live in a peaceful, quiet neighborhood and the pursuit of happiness.

(b) *Policy.* It is the policy of the City that its inhabitants are entitled to live in a community which is generally safe and free of conditions which impair or threaten the general health and welfare of the community. Further, citizens have the right to live in an attractive community, free of litter, garbage and unsightly junk especially when such conditions do not enhance individual rights or the ownership and enjoyment of property. To protect against such conditions, the City intends to define, prohibit and abate nuisances or to otherwise cause such nuisances to be removed from the City.

(c) *Enforcement.* The Code Enforcement Officer and the Building Inspectors for the City of Morganton shall be primarily responsible for the administration and enforcement of this Chapter; however, as necessary, the Department of Public Safety and its sworn personnel, the Department of Public Works and any other personnel may take the necessary action to administer this Chapter and enforce its various provisions. As used in this chapter the term "Code Enforcement Officer" shall include all other individuals charged with the enforcement of this ordinance. (Ord. No. 99-17, 4-5-99)

#### Sec. 8-4002. Definition of a Nuisance.

(a) For the purpose of this Chapter, the term "nuisance" shall mean or refer to any condition or any use of property or any act or omission affecting the condition or use of property which threatens or is likely to threaten the safety of the public; adversely affects the general health, happiness, security or welfare of others; or, is detrimental to the rights of others to the full use of their own property and their own comfort, happiness and emotional stability because of decreased property values and the unsightliness and decreased livability of neighborhoods.

Further, the City Council finds and declares that, among other conditions, the following specific conditions are prejudicial to the general health, safety and welfare of the City and its inhabitants, lessens the attractiveness and livability of the City and when located on any lot or parcel of land within City limits, are a nuisance and are therefore unlawful:

- (1) The overgrowth or heavy growth of weeds, bushes, poison oak, poison ivy, vines, briars or other noxious vegetation (except as permitted in Section 8-4004); or
- (2) The uncontrolled growth of weeds, grass and bushes to a height in excess of 10 inches (except as permitted in Section 8-4004); or
- (3) The uncontrolled growth of bushes, weeds, vines, shrubbery and other vegetation that is or is likely to become a breeding ground, a habitat for or a harbor for rats, mice and other undesirable animals, mosquitoes, flies

and undesirable insects or snakes or other pests; or

- (4) The overgrowth or heavy growth of weeds, bushes, vines and other vegetation so as to conceal broken bottles, jagged edges, old boards with nails, sharp objects or other similar dangerous conditions that are likely to cause injury; or
- (5) A collection place for lumber, bricks, blocks, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating and air conditioning supplies or materials or any other type of old or unusable building supplies (especially those with nails, staples or sharp objects and edges) unless such conditions are temporary in nature and caused by a current construction project in progress pursuant to a lawfully issued building permit; or
- (6) A collection place for garbage, garbage bags, food and kitchen waste, litter, animal waste, trash and refuse or any other rotten or putrescible matter of any kind; or
- (7) A collection place for garbage, food waste and trash in, around or near trash cans, receptacles or dumpsters, that attracts or is likely to attract mice and rats, flies and mosquitoes or other pests; or
- (8) Rotten, damaged or dilapidated sheds, outbuildings, garages or other uninhabited structures which have collapsed, partially collapsed or are likely to collapse; or pose a danger of fire; is or is likely to become a breeding place or habitat for rats, mice and other pests; or, present a risk of injury to neighborhood children who are likely to be attracted to the place or to adjacent property and property owners; or
- (9) The use of carports, open porches, decks, open garages and other outdoor areas that are visible from the street as a storage or collection place for boxes, appliances, furniture (but not typical outdoor or yard furniture), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods or other similar condition that increase the likelihood of a fire; may conceal dangerous conditions; may be a breeding place or habitat for mice, rats or other pests; or, create an

unattractive condition or visually blighted property; or

The placement, storage or use of upholstered sofas, couches, chairs or other indoor type furniture, appliances, seats removed from motor vehicles or other furniture not intended for outdoor use by the manufacturer use on any open porch, carport, stoop, deck, veranda, terrace, patio or other outdoor area that is visible from nearby streets and sidewalks; or

- (10) An open or unsecured storage or collection place for chemicals, acids, oils, gasoline, flammable or combustible materials or flammable or combustible liquids, poisonous materials or other similar harmful or dangerous substances, gasses or vapors; or
- (11) A collection or storage place for old worn out, broken or discarded machinery, car parts, junk, tires, tire rims, furniture, stoves, refrigerators, appliances, cans and containers, household goods, plumbing or electrical fixtures, old rusty metal, fencing materials or other similar materials; or
- (12) A collection place for paper, trash and plastic, discarded cups, food wrappers and containers or other materials that are likely to be blown from place to place; or
- (13) A collection place, pool or pond of stagnant or foul water or persistent dampness caused by overflowing septic tanks, manmade berms, dams, open ditches, overflowing pipes, foundation trenches or other impoundments of any kind; or
- (14) A storage place or place of collection for broken bottles, glass, tin, aluminum or other sharp, pointed, jagged objects or rusted metal; or
- (15) Barns or farm animal pens, pastures or enclosures for farm animals which are not kept sanitary and clean or otherwise become a collection place for animal waste and which because of the conditions associated therewith attract rats, mice, flies or other pests or emit foul odors that can be detected or noticed on adjacent properties or are otherwise not kept in a sanitary condition; or
- (16) Dog lots, pens, pet enclosures of all kinds, outdoor areas where dogs or other pets are chained or kept or areas

where dogs and cats are permitted to roam which become a collection place for dog, cat or pet waste and excrement and which attract flies or other pests, emit foul odors which can be detected or noticed on adjacent property or are not kept in a sanitary condition; or

- (17) A collection place for sewage and sewage drainage or the seepage from septic tanks, broken or malfunctioning plumbing and sewer pipes or any other seepage of dangerous, hazardous or poisonous liquids; or
- (18) A collection place for tree limbs, dried brush, dead vegetation, stumps or other decayed wood and materials or other similar rubbish; or
- (19) Any discharge into or polluting of any stream, creek, river or other body of water or the discharge of any dangerous substance or any other material likely to harm the water or any vegetation, fish or wildlife in or along the water or the storage of such harmful materials and substances in a manner so that it is likely that such streams, creeks, rivers or other bodies of water will become polluted or adversely affected in any manner; or
- (20) Any conditions or use of property, which results in the emission of pollutants and particles into the atmosphere or causes noxious odors, vapors and stenches to be discharged into the air.

(b) *Exceptions.* Notwithstanding the above, the following uses and the conditions associated with such uses shall not be considered as a nuisance unless there are other circumstances which cause the use and/or the condition to become a nuisance:

- (1) *Businesses.* The outside storage of raw materials, products and goods, equipment or machinery that are used by a lawful business, including agricultural uses, an industrial plant or a commercial entity that is lawfully operated in full compliance with all required licenses and permits and in compliance with all environmental laws, zoning laws and other local ordinances shall not be unlawful so long as the use of the raw materials, products, machinery, equipment and goods are necessary to the operation of the business, industry or commercial entity and are in accordance with normal or customary practice.

This exception shall not apply to the storage of inherently dangerous materials and/or goods and supplies in an unsecured location nor shall it apply to the unnecessary storage or collection of materials that are no longer needed for the purpose of the business nor expected to be used in the business in the foreseeable future.

(2) *Overgrown Areas.* Woods, natural areas or planted areas along creeks, greenways, public parks and natural areas required by the Zoning Ordinance for screening or as a buffer area or habitat that is intended to be left natural or protected, cultivated areas and managed vegetation under state and federal laws or for other lawful purposes shall not be a violation under either Section 8-4002(a)(1) or (2) above unless there are other conditions associated therewith that cause the area to be a nuisance.

(3) *Emissions and Discharges.* Air emissions and pollutants, discharges into streams or waterways or other types of emissions and discharges that are in compliance with a lawfully issued permit by any federal or state authority or are exempted from local regulation and shall not be a nuisance under this Chapter.

(c) *Abatement.* The nuisances described above may be removed or abated by the Code Enforcement Officer using the procedures set forth in this Chapter without any further action or direction by the City Council.

(d) *Other Nuisances.* The specific conditions and nuisances described above are not intended to be the only conditions which may be declared to be a nuisance and the City Council reserves the right to declare other conditions to be a nuisance as herein provided. (Ord. No. 99-17, 4-5-99; Am. Ord. No. 99-22, 5-3-99)

#### **Sec. 8-4003. All Nuisances Prohibited.**

It shall be unlawful for any person to create or cause a nuisance to be created or for the owner, tenant, occupant, caretaker or person in possession of any lot, parcel or tract of land in the City to create a nuisance or to otherwise permit, allow or suffer a nuisance to be created or allow a nuisance to remain on such property after it has been declared a nuisance in the manner provided for herein.

For purposes of this chapter, the owner, or owners, as well as any tenant, caretaker, occupant or person in possession of any lot or parcel of land shall be liable for any condition that is determined to be a nuisance and this chapter shall be fully enforceable against any or all of such persons, jointly or severally. (Ord. No. 99-17, 4-5-99)

#### **Sec. 8-4004. Investigation.**

Upon the receipt of a complaint or upon the discovery of any of the conditions set out above, a thorough investigation shall be conducted and a written report prepared by the Code Enforcement Officer, the building inspector or some other enforcement personnel (collectively called the "Code Enforcement Officer") setting forth the names of the owners and the occupants of the property, describing the property and summarizing the findings. (Ord. No. 99-17, 4-5-99)

#### **Sec. 8-4005. Summary Abatement.**

After completing the investigation and preparing the required written report, the Code Enforcement Officer may summarily remove, abate or remedy any condition or nuisance that is dangerous or prejudicial to the public health or public safety. The Code Enforcement Officer shall make a specific finding as to how the conditions are dangerous or prejudicial to the public health or public safety and why immediate removal is required. The expense of the removal, abatement or other action by the City shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose and shall be collected as unpaid taxes as authorized by G.S. 160A-193. To the extent possible, the Code Enforcement Officer shall attempt to provide the property owner and/or occupant of the premises notice by any reasonable means prior to summary abatement. The failure to provide such notice shall not, however, delay or prevent the Code Enforcement Officer from summarily removing or abating any condition that is dangerous or prejudicial to the public health or public safety. Written notice shall be provided to the tenant to the property owner and/or occupant of the premises after summary abatement in the same manner provided for in Section 8-4008. (Ord. No. 99-17, 4-5-99)

#### **Sec. 8-4006. Other Removal or Abatement.**

After investigation and preparation of the required written report and if the Code Enforcement Officer or other enforcement personnel determines that immediate summary abatement is not required, the Code Enforcement Officer shall consider other means of enforcement authorized by this chapter.

However, prior to ordering the removal of unattractive conditions which do not threaten the public safety or pose a general threat to the health, safety and general welfare of the citizens of Morganton, the Code Enforcement Officer shall first determine that such conditions are visible from adjacent property or from a nearby street or highway and that the aesthetic benefits of removing or correcting the conditions outweigh the burdens imposed upon the private property owner. Such

findings shall be based upon a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing the community, neighborhood or area appearance, including the protection of property values, the indirect protection of the public health and safety, preservation of the character and integrity of the community and the promotion of comfort, happiness and emotional stability of nearby residents. (Ord. No. 99-17, 4-5-99)

#### Sec. 8-4007. Order of Abatement.

(a) *Determination and Issuance.* Whenever the Code Enforcement Officer has determined that the conditions on a particular lot or parcel of land are a nuisance and ought to be abated or otherwise corrected, the Code Enforcement Officer shall issue an order of abatement to the owner, tenant, occupant or other person in apparent possession of the premises. The order shall be in writing, shall set forth the findings of the Code Enforcement Officer and shall describe the appropriate corrective action. The Code Enforcement Officer shall establish a deadline not to exceed sixty (60) days for the abatement of the conditions which constitute the nuisance.

The order shall be served upon one or more of the owners of the property as well as the tenant/occupant or other person in apparent possession of the premises as follows:

- (1) By delivering a copy of the order to the person or by leaving copies thereof at the usual residence of the person with some person of suitable age and discretion then residing therein; or
- (2) By mailing a copy of the notice by registered or certified mail, return receipt requested, addressed to the person to be served and actually delivered to the addressee; or
- (3) By delivering a copy of the notice to any officer, employee or agent of a corporation, partnership or business; or
- (4) If, after a due and diligent effort, the person cannot be located within the City of Morganton, by posting a copy of the written notice in a prominent place upon the real property on which the conditions are located.

(b) *Appeal.* Any tenant/occupant or property owner aggrieved by the issuance of an order of abatement may appeal the issuance of the order by filing a written notice with the City Manager within ten (10) days from the date the order is served on the individual. The notice shall state the grounds for the appeal and shall provide the name, address and telephone number of each owner, of the tenant or occupant and the person in charge of the premises. The notice shall also include a statement explaining

why the conditions are not a nuisance, may include photographs, affidavits and any other information deemed appropriate by the aggrieved party. Any appeal not filed within the required ten (10) day period of time, shall be summarily dismissed by the City Manager.

(c) *Hearing.* A hearing shall then be scheduled before either the City Manager or the City Council based upon the following:

- (1) If the appeal raises issues involving the manner or method of abatement of the nuisance, or involves solely a determination as to whether the conditions constituting the nuisance fall within those definitions of a nuisance identified in Section 8-4002(a), the hearing shall be before the City Manager, or
- (2) All other appeals, including appeals from an order of abatement involving the removal of unattractive conditions which do not threaten the public safety or pose a general threat to the health, safety and general welfare of the citizens of Morganton, shall be scheduled for hearing before the City Council.
- (3) Further, at the direction or request of the City Council, the enforcement of any order of abatement issued by the Code Enforcement Officer or affirmed by the City Manager may be scheduled for a hearing by the City Council but such decision is discretionary with the Council and is not an appeal as a matter of right.

Notice of the time, date and place of the hearing shall be provided to the aggrieved party in writing by mail addressed to the aggrieved party at the address set out in the notice of appeal.

(d) *Conduct of Hearing.* At the hearing, the City Manager or the City Council may receive and consider evidence in the form of testimony, affidavits, statements, photographs, pictures, documents or other written proof, including any report by the Code Enforcement Officer, and the property owner, tenant, occupant or other person in possession of the premises shall have the right to appear and to show cause why the conditions are not a nuisance or ought not to be abated. The hearing shall be informal and strict rules of evidence shall not apply. The aggrieved party may, but shall not be required, to be represented by an attorney.

(e) *Determination.* After the hearing, the City Manager or the City Council, as appropriate, shall enter an order either affirming the original order of abatement, modifying the order of abatement or vacating the original order of abatement as may be

determined to be appropriate under the facts presented. A copy of the order shall be served upon the aggrieved party in the manner provided for in Subsection (a) above. (Ord. No. 99-17, 4-5-99)

#### Sec. 8-4008. City Abatement.

(a) Whenever the Code Enforcement Officer has determined that a nuisance exists and has issued proper notice thereof or has issued an order of abatement, the property owner, tenant, occupant or person in possession of the premises on which the nuisance is located shall comply with such order by abating the nuisance in the manner required and it shall be unlawful for any person to fail, refuse or neglect to comply with an order of abatement except that during any period of appeal, compliance with the order of abatement shall be stayed pending the review and final determination by the City Manager and/or City Council in accordance with Section 8-4008.

(b) A contract between the property owner, occupant or person in possession of the premises on which the nuisance is located and the City of Morganton providing for the removal of such conditions at a fee and upon such terms and conditions as the City Manager may approve shall be deemed to be compliance in full with the order of abatement; however, other methods of complying with the order of abatement, including the removal of the nuisance by the property owner, the occupant or person in possession of the premises or by any person under contract with those individuals may also be compliance.

(c) Upon the failure of the property owner, tenant, occupant or person in possession of the premises to take the corrective action ordered by the Code Enforcement Officer within the time specified, the City may then remove, abate or remedy the condition that is dangerous or prejudicial to the public health or public safety and the expense of such action shall be paid by the person in default pursuant to G.S. 160A-93. If not paid, such expense shall become a lien upon the land or premises where the trouble arose and may be collected as unpaid taxes. (Ord. No. 99-17, 4-5-99)

#### Sec. 8-4009. Other Nuisances.

In addition to the conditions declared to be a nuisance enumerated in Section 8-4002(a) the City Council may, by ordinance, define, prohibit, regulate or abate other acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the City.

Prior to adoption of such ordinance, the City Council shall conduct a hearing at any regularly scheduled or specially convened meeting of the Council after giving written notice to the property owners, occupants or other persons in possession of the premises on which the conditions alleged to be a nuisance are located. The notice shall describe the

conditions believed to be a nuisance and shall set forth the date, place and time of the public hearing. The notice shall be served in the same manner other notices are served in this chapter; except, that if the notice is served by posting on the property, then such notice shall also be advertised once in a newspaper having local circulation at least ten (10) days prior to the hearing.

At the hearing, the City Council may receive and consider evidence in the form of testimony, affidavits, statements, photographs, pictures, documents or other written proof and the property owner, tenant, occupant or other person in possession of the premises shall have the right to appear and show cause why the conditions are not a nuisance or ought not to be abated. The hearing shall be informal and the normal rules of evidence shall not apply.

If the conditions are determined by the Council to be a nuisance, the Council may order the removal or abatement of the nuisance and take such other remedial action as may be appropriate. If the City Council intends to declare unattractive conditions a nuisance and order the abatement thereof, the City Council shall first find in writing that the aesthetic benefits of removing or abating the conditions outweigh the burdens placed upon the private property owner. Such special findings shall be based upon a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance including protection of property values, promotion of economic and community development opportunities, indirect protection of the public health and safety, preservation of the character and integrity of the community and the promotion of the comfort, happiness and emotional stability of area residents. (Ord. No. 99-17, 4-5-99)

#### Sec. 8-4010. Other Methods of Enforcement.

(a) *Violation.* Any violation of this chapter or the failure to abide by any lawful order issued pursuant to this chapter shall be a misdemeanor or infraction and shall be punishable as provided in G.S. 14-4, as amended from time to time.

(b) *Civil Penalties.* In addition to the penalty provided in Subsection (a) above, the creation or maintenance of any nuisance in violation of this chapter or the failure to abate, remove or remedy any nuisance pursuant to an order of abatement or any other violation of this chapter shall also be a civil offense and shall subject the offender to a civil penalty in the following amounts:

- (1) For the first offense, the penalty shall be one hundred dollars (\$100.00), and
- (2) For the second offense, the penalty shall be two hundred dollars (\$200.00), and

## CHAPTER 5. RESERVED\*

- (3) For the third and any subsequent offense, the penalty shall be three hundred (\$300.00) and each days continuing violation thereafter shall be a separate and a distinct offense and shall subject the offender to a penalty in the amount of three hundred dollars (\$300.00) for each day thereafter that the offense continues.

Any person violating this article, including any property, owner or owners, jointly or severally, any tenant, any occupant or any person in charge of the premises shall be issued a written citation in accordance with Section 1-1005 of this Code.

The written citation may be issued by any Code Enforcement Officer, any Public Safety Officer, or any building inspector or other enforcement officer authorized by the City Manager.

The penalty shall be paid to the Tax Collector of the City of Morganton within seventy-two (72) hours from the time of issuance of the written citation.

(c) *Judicial Abatement.* In addition to the penalties imposed under Subsection (a) and (b) above, the provisions of this Chapter may also be enforced through equitable remedies issued by a court of competent jurisdiction including injunction and order of abatement or any other remedy permitted under this Code or at law or equity and it shall not be necessary for the City Council to authorize the filing of such action.

(d) *Combination.* Further, this Chapter may be enforced by any one, all or a combination of the remedies authorized herein or in Section 1-1005 of this Code, under G.S. 160A-175, or any other remedy permitted at law. (Ord. No. 99-17, 4-5-99)

---

Editor's note—Ord. No. 90-12, § 1, adopted March 12, 1990, repealed former ch. 5, §§ 8-5001—8-5003, which pertained to general health regulations and derived from the 1966 Code, ch. 12, § 12-4, 12-5 and 12-9.