

Title 8

HEALTH AND SAFETY

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Chapter 8.04
Health Regulations

Sections:

8.04.010 Buildings to be connected to sewer.

8.04.010 Buildings to be connected to sewer.

Each building in the town shall be connected to a sewer system constructed and maintained in accordance with the ordinances and regulations of the town. It shall be unlawful for any person or entity owning such building to refuse or neglect to comply with the provisions of this section. (Ord. 583 §2, 2005; Ord. 246 §74, 1988; prior code §8-15)

Chapter 8.06
Nuisances

Sections:

- 8.06.010 Definitions.
- 8.06.020 Nuisances prohibited.
- 8.06.030 Nuisances affecting cleanliness and health.
- 8.06.040 Nuisances affecting garbage, trash and junk.
- 8.06.050 Nuisances creating annoying conditions.
- 8.06.060 Interpretation; effect on other ordinances.

8.06.010 Definitions.

A. In the interpretation of the definitions set forth in this section, it is the express intent of the board of trustees that such definitions be liberally construed to include like matters, materials, objects, or substances, whether or not the same are specifically identified. It is further the expressed legislative intent of the board of trustees that the definitions not be considered mutually exclusive, and that, in the interpretation of such definitions, it is recognized that any substance, material or object may constitute litter, trash, garbage and junk at the same time. Liberal construction of definitions is deemed necessary by the board of trustees in order to fulfill the public purpose of this section, which is to ensure that the town is maintained in a clean, healthy and attractive condition by eliminating all nuisances and outside storage of garbage, trash, junk and related matters, objects or materials as set forth in this section.

B. The following words, terms and phrases, when used in this Title 8 shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Code enforcement officer" means the chief of police or his or her designee.
2. "Garbage" means wastes resulting from the handling, preparation, cooking, and consumption of food and wastes from the handling, storage, and sale of produce.

3. "Junk" means scrap brass, scrap copper, scrap iron, scrap lead, scrap tin, scrap zinc and all other scrap metals and their alloys, bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, old or used machinery of any type, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition.

4. "Litter" means and includes any man-made or man-used waste that, if deposited within the town other than in a litter receptacle, tends to create a danger to public health, safety and welfare or to impair the environment of the people of the town. "Litter" includes any garbage, trash, refuse, confetti, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic or paper container, used construction materials including concrete and other construction debris, motor vehicles or parts thereof, furniture, appliances, such as refrigerators, freezers, ranges, stoves, washers and dryers, dead animal carcasses, nauseous or offensive (as related to the senses of a person of ordinary intelligence and reasonableness within the community) matter of any kind, or any object that does or may tend to injure any person or create a traffic hazard.

5. "Person" means any owner, resident or occupant of any parcel of property, any member of the household residing therein or any person who has any building, property, lot or premises under his or her control.

6. "Public nuisance" or "nuisance" means a thing, act, failure to act, occupation, activity, condition or use of property that:

- a. Annoys, injures or endangers the safety, health, comfort or repose of any person;
- b. Offends the public decency;
- c. Interferes with, obstructs or tends to obstruct or render dangerous for passage any lake, stream, canal or other body of water or a public park, street, alley or other public way;
- d. In any way renders any person insecure in life or use of property; or
- e. Otherwise constitutes or is known or declared a public nuisance by virtue of common law, state statutes or ordinances of the town.

7. "Trash" means combustible refuse, including but not limited to paper, cartons, boxes, barrels, wood (except stacked firewood and stacked construction materials), tree branches, yard trimmings, dead plant material, wood or upholstered furniture or bedding, or similar substance or material; noncombustible refuse, including but not limited to metals, tin or aluminum cans, metal furniture, dirt, rock, pieces of concrete, glass, crockery or other minerals or mineral wastes; and street rubbish, including but not limited to street sweepings, dirt, leaves, catch bag dirt and contents of a litter receptacle. "Trash" does not include earth and waste from building construction during the period in which a valid building permit issued by the town is active. (Ord. 583 §3, 2005)

8.06.020 Nuisances prohibited.

A. It is unlawful for any person to own, occupy or have under his or her control any property, building, lot or premises with any nuisance located thereon. It is unlawful for any person to:

1. Do any act constituting a nuisance;
2. Knowingly fail to act where such failure causes or continues a nuisance;
3. Permit any activity or condition constituting a nuisance; or
4. Aid or abet in the creation or maintenance of a nuisance.

B. The prohibitions of this section shall apply only to persons in a position to avoid, prevent or discontinue a nuisance. (Ord. 583 §3, 2005)

8.06.030 Nuisances affecting cleanliness and health.

A. Any unclean, foul, unsafe, unhealthy, dangerous, defective or filthy drain, ditch, tank or gutter, or any leaking or broken sloop, garbage or manure box or receptacle of like character shall be deemed a nuisance.

B. Any accumulation of manure on premises where animals are kept, unless the premises are kept clean and the manure kept in a box or vault screened from flies and emptied at least once a week, shall be deemed a nuisance.

C. It shall be unlawful to deposit in or on or to litter any street, alley or public place with garbage, rubbish, debris, sod, earth, sand, gravel, concrete or any other construction or waste material. Such actions shall be deemed a nuisance.

D. Any pond, pool, stream, ditch or deposit of water or other liquid or viscous body that is unsafe, dangerous or detrimental to the public health or safety, or unwholesome or offensive in odor, shall be deemed a nuisance. (Ord. 583 §3, 2005)

8.06.040 Nuisances affecting garbage, trash and junk.

A. It is unlawful for any person to:

1. Store upon his or her property, place upon his or her property, or allow to remain upon his or her property any garbage, junk, litter or trash;
2. Dump or deposit, or cause to be dumped or deposited, litter, garbage, trash or junk on the property of another or on property owned by the town, unless such property is clearly marked and designated as a proper dump or receptacle for the deposit of garbage, junk, litter or trash;
3. Place or permit to remain anywhere in the town any garbage or other material subject to decay other than leaves or grass, except in a watertight and airtight can or container, which neither creates an odor or stench nor is accessible to animals;

4. Operate or cause to be operated on any highway or public way in the town any truck or vehicle transporting garbage, trash or junk unless such garbage, trash or junk is covered or otherwise secured to prevent any portion of such garbage, trash or junk from being thrown or falling upon the highway or public way;

5. Cause or permit to accumulate any litter, ashes or trash, or any such material that can be blown away by the wind anywhere in the town;

6. Cause or permit to accumulate any grass clippings or leaves anywhere in the town, except in a container or a sealed plastic trash bag awaiting pickup and disposal;

7. Display, or cause or allow to be displayed, upon his or her property any junk, unless the junk is completely shielded and screened from the view of any member of the general public by a wall, fence or similar barrier constructed in conformance with this code;

8. Keep or store any construction materials unless a valid building permit is in effect for construction at that location and such materials are covered or screened or in some manner protected so as to prevent such materials from being blown, scattered about or otherwise moved; or

9. Store upon his or her property in such manner as to be visible to the general public or any member thereof goods, material or substances not otherwise or specifically defined or definable as litter, trash, garbage or junk, but which goods, materials or substances are of a type, kind, quantity or description not commonly associated with the zoning classification or permitted use of the property.

B. The provisions of this section shall not apply to vegetable materials in any properly layered, actively working compost pile, pit or trench. (Ord. 583 §3, 2005)

8.06.050 Nuisances creating annoying conditions.

The creation of dense smoke, noxious fumes or odors, gas, soot or cinders in such quantities as to render the same objectionable to the public or harmful to people or property shall be deemed a nuisance; provided, however, that this section shall not apply to fireplaces, wood stoves or barbeque facilities. (Ord. 583 §3, 2005)

8.06.060 Interpretation; effect on other ordinances.

Notwithstanding the provisions of any zoning or other ordinance, now or hereafter enacted, authorizing certain uses or location of property, it is the intention of the board of trustees and is hereby so declared that any use, location or activity otherwise authorized by zoning or other ordinances shall be subject to this chapter prohibiting nuisances. (Ord. 583 §3, 2005)

Chapter 8.08

Fugitive Dust

Sections:

8.08.010 Policy.

- 8.08.020 Enforcement and penalty.
- 8.08.030 Variance board.
- 8.08.040 Variances—Granting.
- 8.08.050 Variances—Hearings.
- 8.08.060 Injunctions.
- 8.08.070 Violation—Penalty.
- 8.08.080 Control on town roads and streets.

8.08.010 Policy.

In order to foster the health, welfare, convenience and comfort of the inhabitants of the town and to protect the property of property owners in the town it is declared to be the policy of the town to prohibit the escape of dust or dirt particles into the air or from being blown or otherwise moved by natural causes from one lot or parcel onto other lots or parcels within the town. To that end, it is the purpose of this chapter to require the use of all practical methods to prevent and control the escape of dust or dirt particles from any lot in the town. (Ord. 149 §1(part), 1981; prior code §8-100)

8.08.020 Enforcement and penalty.

The provisions of this chapter shall be enforced in the following manner:

A. A summons and complaint for the town municipal court shall be issued to the person or legal entity owning the property from which the dust or dirt particles are alleged to have originated.

B. If the person or legal entity is found guilty of the charge a fine of up to one hundred dollars may be levied against such person or legal entity.

C. Upon a second or subsequent conviction of any person or legal entity within one year of a previous conviction of a violation of this chapter, a mandatory fine of at least two hundred dollars shall be levied but in no instance shall a fine of more than three hundred dollars be levied.

D. The court may, in addition to any fine levied, order the person or legal entity to cease and desist any activity causing the condition complained of or may order the party or legal entity to take positive corrective action to alleviate the condition. (Ord. 149 §1(part), 1981; prior code §8-101)

8.08.030 Variance board.

The board of adjustment created by Chapter 2.56 shall sit as a variance board for variance hearings pursuant to this chapter. (Ord. 149 §1(part), 1981; prior code §8-102)

8.08.040 Variances--Granting.

The variance board may grant a variance suspending or modifying the enforcement of the provisions of this chapter whenever it determines that:

A. Reasonable control techniques are not available to the applicant for the variance for controlling the escape of dust or dirt particles from the applicant's property or that such controls would create an unreasonable economic hardship on the applicant; and

B. The granting of a variance would be consistent with the policy declaration set forth in Section 8.08.010. (Ord. 149 §1(part), 1981; prior code §8-103)

8.08.050 Variances--Hearings.

A. All variance hearings shall be conducted not less than fifteen days following the written request of the applicant.

B. All requests for variance hearings should be in writing and directed to the town clerk and should specify:

1. The legal description of the property for which the variance is sought;
2. The name and address of the owner(s) of the property;
3. The condition existing for which the variance is sought.

C. The town shall appear as a party through the town attorney; the applicant may appear in person, by a representative or by legal counsel.

D. A full record of all hearings shall be kept by the town and all testimony shall be under oath or affirmation.

E. All hearings shall be subject to judicial review as provided in Article 4, Title 24, C.R.S., 1973.

F. The variance board shall make written findings of fact and a written order shall be issued within ten days of the hearing date, and the applicant shall be sent a copy of all findings and the order.

G. Any party may move the court to remand the case to the variance board, in the interests of justice for the purpose of adducing additional specified and material evidence and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the variance board, the division or the commission.

H. Any proceeding for judicial review of any final order or determination of the variance board shall be filed in the district court for the district in which is located the air contamination source affected, and it shall be filed within twenty days after the date of the final order or determination. (Ord. 149 §1(part), 1981; prior code §8-104)

8.08.060 Injunctions.

In the event any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the board of trustees may order the town attorney to bring a suit for an injunction to prevent any further or continued violation of such order. In any such suit the final findings of the municipal court based upon evidence in the record shall be prima facie evidence of the facts found therein. (Ord. 149 §1(part), 1981; prior code §8-105)

8.08.070 Violation—Penalty.

It is a violation of this chapter for any person or legal entity to cause, allow or suffer any dust or dirt particles to escape from property owned by the person or legal entity in such a manner as to be a nuisance to any person or to the public, or to endanger the health, safety and comfort of any such person or to cause damage to the property of another or to create a pollution nuisance. (Ord. 342, 1996; Ord. 149 §1(part), 1981; prior code §8-106)

8.08.080 Control on town roads and streets.

A. Private application of dust control chemicals. The town will permit private individuals to apply dust control chemicals to unpaved town roads and streets at their own expense, subject to the following terms and conditions:

1. Chemicals used for dust control shall not contain any hazardous substances as defined in Section 29-22-101, C.R.S. Petroleum products, whether commercially processed or not, may contain hazardous substances and therefore may not be suitable for dust control.
2. In addition, petroleum products that contain naphtha or other combustible materials shall not be used for dust control.
3. Chemicals used for dust control must be applied in compliance with all federal, state and local laws, rules and regulations.
4. Chemicals used for dust control must be applied in such a manner that will not contaminate any waters of the United States. Therefore, any chemicals or materials that will wash from the roadbed are not suitable for dust control purposes.
5. The town will make every effort not to unduly disturb the road or street section which has been treated with dust control chemicals. However, the town in its sole discretion will determine the time and frequency at which any road or street section must be graded to restore a reasonable travel surface. Further, the town will not be responsible for reapplying dust control chemicals to any graded area.
6. The town in its sole and absolute discretion will determine the time and frequency at which the town may at its expense spread dust control chemicals. The town may in its sole and absolute discretion determine not to spread any dust control chemicals.
7. All dust control chemicals used on unpaved town roads and streets shall be approved for use by the director of operations or the director's designee. The materials set forth on Exhibit A attached to the ordinance codified herein are currently approved for use on unpaved town roads and streets. The director of operations shall have the authority to add or delete materials from the list of approved materials at any time without prior notice. The current list of approved materials shall be available at Town Hall during regular business hours.
8. No material that is not on the then-current list of approved materials shall be applied to town roads and streets unless the director of operations in writing approves the use of the proposed material prior to its application on town roads and streets.

B. Grading. At no cost to the private individual, the town will grade a section of roadbed prior to the application of dust control chemicals. Requests for grading shall be made at least seventy-two hours in advance. The town will attempt to perform requested grading within such seventy-two-hour period, but shall be under no obligation to do so. (Ord. 712 §1, 2009; Ord. 388 §1, 1998)

Chapter 8.12

Garbage and Refuse

Sections:

- 8.12.010 Definitions.
- 8.12.020 Waste material—Removal required—Burning prohibited.
- 8.12.030 Accumulation prohibited.

8.12.010 Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings set out in this section:

A. "Bulky materials" are defined as limbs, boards, pipe and similar objects in excess of two feet in length as well as any other item or material of unusual size, including but not limited to automobiles or parts thereof, refrigerators, washers, dryers, television sets, bicycle frames and building materials.

B. "Hazardous materials" are defined to include, but shall not be limited to, hot ashes, hot coals, radioactive material, explosive substances, chemical waste, flammable material and other similar substances.

C. "Receptacles," with respect to single-family residential waste collection, means cans of a capacity no greater than thirty-two gallons and weighing not more than thirty-five pounds when filled, carts of a capacity no greater than ninety-six gallons, or plastic bags having a capacity of not more than thirty-two gallons and weighing not more than thirty-five pounds when filled. With respect to waste collection for uses other than single-family residences, "receptacles" means cans, carts or plastic bags meeting the foregoing requirements, as well as covered carts or dumpsters of a larger capacity.

D. "Waste materials" includes ashes, trash, waste, rubbish, garbage or other discarded material and shall be deemed to include but not be limited to leaves, grass, limbs, weeds, trimmings, cans, bottles, rags, paper, boxes and any other matter ordinarily discarded in or about dwelling houses, commercial establishments or industrial sites. (Ord. 537 §1, 2003; Ord. 155 §2, 1980; prior code §8-18)

8.12.020 Waste material—Removal required—Burning prohibited.

A. All waste materials, including hazardous or bulky materials, shall be collected and removed from the town on a weekly basis by the owner, tenant or occupant of each residence, living unit, business or commercial enterprise or industrial site located within the town, either by self-service or by an independent service providing collection and removal service to such site.

B. All waste materials shall be placed in receptacles, as defined in this chapter, by the owner, tenant or occupant of each residence, living unit, business or commercial enterprise, or industrial site. In residential areas with alleys, the receptacles shall be placed in the alley adjacent to the residence. If there is no adjacent alley, the receptacles shall be placed on the street in front of the residence. All receptacles shall be covered or, in the case of bags, tied to secure against leakage and disruption by animals and weather conditions. All receptacles that must be moved to a right-of-way or other readily accessible place for collection shall not be placed in the right-of-way earlier than the day prior to the scheduled collection day and shall be removed from the right-of-way by the owner, tenant or occupant by no later than the day after the scheduled collection day, irrespective of whether collection in fact occurred.

C. Any residence, living unit, business or commercial enterprise, or industrial site having hazardous or bulky waste material that is not acceptable to the waste collection service providing service to the site shall provide for its removal by self-service, another waste collection service, or by other means that conform with all applicable laws.

D. It is unlawful for any person, corporation or entity owning, occupying or managing any lot, tract or parcel of land within the town to burn or allow the burning of waste materials, the removal of which is required by this section. The foregoing prohibition shall not apply to the burning of untreated wood in a fireplace or to the burning of operating irrigation ditches. Persons undertaking a ditch burning shall give prior notice to the fire department. (Ord. 634 §1, 2007; Ord. 580 §1, 2005; Ord. 537 §1, 2003; Ord. 155 §5, 1980; prior code §8-21)

8.12.030 Accumulation prohibited.

It is unlawful for any person to allow or permit waste materials, including but not limited to bulky materials and hazardous materials, to accumulate in any building, on any property or along any street, avenue, alley or sidewalk. (Ord. 537 §1, 2003; Ord. 169 §1, 1981; prior code §8-20)

Chapter 8.16

Weeds and Rubbish

Sections:

- 8.16.010 Definitions.
- 8.16.020 Weeds—Removal required.
- 8.16.030 Weeds—Duty to remove—Burning prohibited.

8.16.010 Definitions.

When used in this chapter, the following words are defined in addition to their common usage, as set forth below:

- A. "Brush" means cut or broken wood or shrubs.
- B. "Grass" means herbage in general, especially nonwoody vegetation.
- C. "Limb" means a large or main branch of a tree.

- D. "Plant" means any member of the vegetable group of living organisms.
- E. "Rubbish" means waste or refuse material, debris, litter and trash.
- F. "Shrub" means a woody perennial plant, smaller than a tree, usually having permanent stems branching from or near the ground.
- G. "Weed" means any useless, troublesome or noxious plant, especially one that grows profusely. (Ord. 246 §77, 1988; prior code §8-25)

8.16.020 Weeds—Removal required.

It shall be unlawful and is hereby declared a nuisance for any person, corporation or entity owning, occupying or managing any lot, tract or parcel of land within the town:

- A. To permit weeds, grasses or brush to grow to a height in excess of six inches upon any lot, tract or parcel owned or occupied by such person;
- B. To store, keep or permit to remain on any lot, tract or parcel owned or occupied by such person trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property;
- C. To fail to remove trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property, together with all rubbish of all kinds, from any lot, tract or parcel owned or occupied by such person;
- D. To permit weeds, grasses or brush to grow to a height in excess of six inches, to store, keep or permit to remain any trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property, or to fail to remove the same together with all rubbish of all kinds, upon and from the area from any lot, tract or parcel owned or occupied by such person to the middle of any alley abutting behind or on the side of the lot, tract or parcel, or upon and from the area from any lot, tract or parcel owned or occupied by such person to the street abutting to the front or on the side of the lot, tract or parcel, such area to include but not limited to the curb, gutter and sidewalk. (Ord. 583 §4, 2005; Ord. 315 §1, 1995; Ord. 246 §75, 1988; prior code §8-23)

8.16.030 Weeds—Duty to remove—Burning prohibited.

A. It shall be unlawful and is hereby declared a nuisance for any person, corporation or entity owning, occupying or managing any lot, tract or parcel of land within the town to fail to remove, immediately upon cutting, all weeds, grasses, brush, trees, limbs, shrubs or plants, together with all such rubbish of all kinds from the town.

B. It shall be unlawful for any person, corporation or entity owning, occupying or managing any lot, tract or parcel of land within the town to burn or allow the burning of weeds, grasses, brush, trees, limbs, shrubs, plants or rubbish of any other kind, the removal of which is required by this section. The foregoing prohibition shall not apply to the burning of untreated wood in a fireplace, or to the burning of operating irrigation ditches. Persons undertaking a ditch burning shall give prior notice to the fire department. (Ord. 583 §5, 2005; Ord. 580 §2, 2005; Ord. 315 §2, 1995; Ord. 246 §76, 1988; prior code §8-24)

Chapter 8.18

Abatement of Nuisances

Sections:

- 8.18.010 Purpose and procedure.
- 8.18.020 Recovery of expenses; lien and assessment policy.
- 8.18.030 Emergencies.
- 8.18.040 Authority to enter on property.
- 8.18.050 Violation; penalty.

8.18.010 Purpose and procedure.

A. The purpose of this chapter is to provide for a procedure by which the town can enforce the various health and safety concerns addressed in this Title 8, and to establish a policy authorizing the town to take corrective enforcement measures should any landowner, tenant or occupant of any property located within the town fail to voluntarily comply with any provision of this Title 8. Abatement of any nuisance as set forth in this chapter shall be optional at the sole discretion of the town, and shall not prevent the town from availing itself of any other enforcement or criminal action, including the issuance of a summons to appear in municipal court.

B. In all cases where a nuisance shall be found in any building or upon any ground or other premises within the jurisdiction of the town, notice shall be given in writing, signed by the chief of police or his or her designee, to the owner, occupant or person in possession, charge or control of such building, ground or premises, or person creating such nuisance where such person is known and can be found, to remove such nuisance. Should any such nuisance not be corrected within the time period stated in the notice, which period shall be at least three days, the chief of police may order the abatement of such nuisance. The chief of police may abate any nuisance by authorizing a private contractor to enter the property and remove the condition or conditions, and may engage such other necessary assistance and incur necessary expenses to abate such nuisance.

C. Any nuisance in or upon any street, avenue, alley, sidewalk, highway or public grounds in the town may be abated forthwith without any notice. (Ord. 583 §7, 2005)

8.18.020 Recovery of expenses; lien and assessment policy.

A. Upon the town or contractor abating the nuisance pursuant to Section 8.18.010, notice of assessment and of the right to a hearing as set forth in this section shall be sent by first class mail from the town clerk to the property address and to the property owner at the address listed for the property owner in the county records. If either notice is returned, the property will be posted with the notice. For purposes of this section, "property owner" shall include renters, lessees, occupants and persons in possession of the property.

B. The amount of the assessment shall include, in addition to all contractors' charges, all direct town costs including inspection costs, attorney fees, court costs and all other associated costs. The property owner shall have forty-five days from the date the notice of assessment is mailed or, if the notice is returned, from the date the property is posted, to pay the assessment. All payments must be made directly to the town clerk. Failure to pay within the time allotted will cause the assessment to be recorded against the property, which assessment shall constitute a continuing lien against the property.

C. A property owner may file a written objection to such assessment with the town clerk within thirty days from the date the notice of assessment was mailed or, if the notice is returned, within thirty days from the date the property was posted. The objection must include a telephone number and address of the objecting party, and must state with specificity the basis for the objection. Failure to include all required information in the objection, including the address, shall constitute a waiver of the right to file an objection.

D. Upon receipt of a written objection meeting the requirements of Subsection C above, the town clerk or a hearing officer designated by the board of trustees shall set a date for a hearing, which hearing shall be held within thirty days from receipt of the objection. Notice of the hearing date shall be mailed to the person making the objection. Failure of such person to attend the hearing at the date and time scheduled shall constitute a waiver of the right to a hearing and a determination of all issues regarding the assessment.

E. The hearing held pursuant to this section shall be conducted in an informal manner, and shall not strictly follow the technical rules of evidence. The town shall have the burden of establishing there was probable cause to determine a violation existed on the property prior to abatement, and that an abatement was conducted by the town. The standard of proof at such hearing shall be by a preponderance of the evidence. A written decision shall be prepared at the conclusion of the hearing and mailed to the property owner, which decision shall be deemed effective upon execution of the written decision.

F. A property owner who requests a hearing pursuant to this section shall be charged an additional administrative cost of twenty-five dollars should the town clerk or hearing officer find in favor of the town. (Ord. 583 §7, 2005)

8.18.030 Emergencies.

Where, in the opinion of the mayor or chief of police, a nuisance constitutes an immediate and serious danger to the public health, safety or welfare, the town shall have the authority to summarily abate the nuisance without notice of any kind. (Ord. 583 §7, 2005)

8.18.040 Authority to enter on property.

The chief of police or other designated agent of the town may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction, including the municipal court, enter upon any land to examine the same to ascertain whether any nuisance exists or to abate such nuisance in the manner provided in this chapter, and shall be free from any action or liability on account thereof. Such authority does not allow entry into any building or structure without consent, a court order or under other circumstances as restricted by law. (Ord. 583 §7, 2005)

8.18.050 Violation; penalty.

Any person who violates any provision of this Chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment. Each day during any portion of which any violation of any provision of this Chapter is committed, continued or permitted by any such person shall be a separate offense. (Ord. 583 §7, 2005)

Chapter 8.20

Smoking in Public Places Prohibited

Sections:

- 8.20.010 Intent; effective date.
- 8.20.020 Definitions.
- 8.20.030 Prohibitions.
- 8.20.040 Smoking prohibited in outdoor restaurants.
- 8.20.050 Smoking areas in restaurants.
- 8.20.060 Signs required to be posted.
- 8.20.070 Additional responsibilities of proprietors.
- 8.20.080 Enforcement.

8.20.010 Intent; effective date.

In order to protect the public health, safety, comfort and general welfare, and because tobacco smoke is a positive danger to health, it is the declared purpose of this chapter to prohibit smoking in areas which are used by or open to the public unless such areas are permissible smoking areas pursuant to this chapter. The provisions of this chapter are effective September 5, 2003. (Ord. 531 §1, 2003)

8.20.020 Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings given in this section, except where the context clearly requires a different meaning:

- A. "Building" means any structure enclosed for protection from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest in such portion as well.
- B. "Club" means an establishment licensed as a club under the liquor laws of the State.
- C. "Dwelling" means any place used primarily for sleeping overnight and conducting activities of daily living, including without limitation a hotel or motel room or suite or hospice, but not the lobby of a hotel, motel or hospice, common elevator, common hallway or other common area.
- D. "Independently ventilated" means that the ventilation system for the area in which smoking is permitted and the ventilation system for any nonsmoking area do not have a connection which allows the mixing of air into the smoking and nonsmoking areas.
- E. "Physically separated" means that there are physical barriers such as walls and doors extending from floor to ceiling that prohibit smoke from entering a nonsmoking area.
- F. "Restaurant" means an establishment licensed as a hotel/restaurant under the liquor laws of the State, or an establishment whose principal business is the retail sale of prepared food and beverages and which has seating for on-premises consumption of food.

G. "Smoke" or "smoking" means and includes, but is not limited to, the lighting of any cigarette, cigar or pipe or the possession of any lighted cigarette, cigar or pipe, regardless of its composition.

H. "Tavern" means an establishment licensed as a tavern under the liquor laws of the State.

I. "Tobacco product" means cigarettes, cigars, cheroots, stogies, periques and other products containing any measurable amount of tobacco, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, short, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco.

J. "Tobacco store" means a retail business open to the public which receives more than fifty percent of its gross revenue for such business location from the retail sale of cigarettes and tobacco products, or products related to the use of cigarettes and tobacco products. (Ord. 531 §1, 2003)

8.20.030 Prohibitions.

A. No person shall smoke within any building except in one of the following locations:

1. In any dwelling. This exception does not extend to a lobby, common elevator, common hallway or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms, but if a hospital, hospice or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a nonsmoker without that person's consent;

2. In a room or hall being used by a person or group for a private social function that is not open to the public;

3. In any home-based business;

4. In a tobacco store;

5. In a designated smoking area in a restaurant as provided in Section 8.20.050 below; or

6. In a tavern or club.

B. Unless excepted under Subsection A above, the prohibitions of this chapter apply to all buildings which serve as places of work, but this Subsection B neither enlarges or diminishes the meaning of Subsection A.

C. Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any place, including without limitation any motor vehicle, outdoor area or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition. (Ord. 531 §1, 2003)

8.20.040 Smoking prohibited in outdoor restaurants.

No person shall smoke within the exterior boundaries or fences of an outdoor eating area of a restaurant. (Ord. 531 §1, 2003)

8.20.050 Smoking areas in restaurants.

A. The owner, lessee, principal manager or person in control of a restaurant may designate one smoking area of no more than fifty percent of the square footage of the floor area of the establishment which is open to the public so long as the smoking area meets all of the following criteria:

1. It is independently ventilated from the nonsmoking areas;

2. It is physically separated from the nonsmoking areas;

3. The area does not include any waiting area, lobby, hallway, elevator, restroom or area adjacent to a self-service food line or cash register, and such areas shall also be excluded from the calculation of the square footage of floor area under this subsection; and

4. Any food or drink service or amenity that the establishment chooses to provide to patrons, other than smoking, shall at all times be at least as available in the nonsmoking portion of the establishment as in the designated smoking area.

B. The town building inspector shall verify that a restaurant meets the requirements of Sections A.1 and A.2.

C. No owner, lessee, principal manager or person in control of a restaurant which designates a smoking area shall fail to maintain it in accordance with the requirements of this chapter.

D. If patron seating at an establishment with a designated smoking area is directed by an employee, then no owner, lessee, principal manager or person in control of the establishment shall fail to ensure that such employee asks each patron for the patron's preference for seating in a no-smoking or a smoking area. If patron seating at an establishment is not directed by an employee, then no owner, lessee, principal manager or person in control of the establishment shall fail to post a conspicuous sign on all public entrances or in a position clearly visible on entry into the establishment advising patrons that such a no-smoking area is available and where it is located. (Ord. 531 §1, 2003)

8.20.060 Signs required to be posted.

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, no owner, lessee, principal manager or person in control of a building or an outdoor restaurant shall fail to post signs with letters no less than one inch high or symbols no less than three inches high as follows:

A. Where smoking is prohibited in the entire establishment and where all or part of the restaurant is outdoors, a sign using the words "No Smoking" or the international no-smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building.

B. In a building where certain areas are designated as smoking areas pursuant to this chapter, a sign using the words "No Smoking Except in Designated Areas" shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building.

C. In a building or establishment where smoking is permitted in the entire building or establishment, a sign using the words "Smoking Permitted" or the international smoking symbol shall be posted

conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment.

D. If an ashtray or other receptacle for extinguished smoking materials is located in a building, except in an area where smoking is permitted, then a sign with the international no-smoking symbol and letters no less than one inch high using the words "No Smoking" and three-quarters of an inch high using the words "Extinguish Here" shall be posted within twelve inches above each such ashtray or other receptacle.

E. The requirements of this section do not apply to an exempt dwelling. (Ord. 531 §1, 2003)

8.20.070 Additional responsibilities of proprietors.

No owner, lessee, principal manager or person in control of a building, establishment or outdoor restaurant shall fail to:

A. Ask smokers to refrain from smoking in any no-smoking area;

B. In a restaurant, if smoking is allowed, affirmatively direct smokers to designated smoking areas; and

C. Use any other means which may be appropriate to further the intent of this chapter. (Ord. 531 §1, 2003)

8.20.080 Enforcement.

A. The director of operations or the director of operations' designee shall be responsible for ensuring compliance with this chapter with regard to facilities which are owned, operated or leased by the town.

B. Any person convicted of violating any provision of this chapter shall, upon conviction, be punished by a fine of not more than three hundred dollars, for each offense. Such person may also be enjoined from any further or continued violation hereof. In determining the sentence to be imposed, the judge shall consider the frequency and duration of the violation, the size of the establishment, whether the violation was knowing or not, and other relevant factors. Imprisonment shall not be imposed as a penalty for any violation of this chapter. Each day any violation of this chapter shall continue shall constitute a separate offense. (Ord. 712 §1, 2009; Ord. 531 §1, 2003)