

ORDINANCE #5-2023-10

AN ORDINANCE AMENDING THE PROVISIONS SET FORTH IN THE AMHERST TOWN CODE OF ORDINANCES TO AMEND CHAPTER 10 (NUISANCES) ARTICLE I (IN GENERAL) SEC. 10-1 – MAINTENANCE OF PREMISES. THIS AMENDMENT WILL DELETE THE AUTHORITY AND/OR INVOLVEMENT OF THE PROPERTY MAINTENANCE BOARD IN MATTERS RELATED TO PROPERTY MAINTENANCE GIVING ALL AUTHORITY TO THE TOWN MANAGER, AND WILL CHANGE THE MANNER IN WHICH PROPERTY OWNERS RECEIVE NOTICE.

WHEREAS, Sections 15.2-1427 and 15.2-1433 of the Code of Virginia, 1950, as may be amended from time to time, enable a local governing body to adopt, amend, and codify ordinances or portions thereof; and

WHEREAS, this amendment will delete the authority and/or involvement of the Property Maintenance Board in matters related to property maintenance, giving that authority to the Town Manager only, and will change notice requirements to property owners.

WHEREAS, the proper advertisement and public hearing were conducted as required by law; and

WHEREAS, the full text of this amendment was available for public inspection in the Town Hall located at 174 S. Main Street, Amherst, Virginia 24521.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF AMHERST that Section 10-1 of the Town of Amherst Code of Ordinances is amended and reenacted as follows:

Sec. 10-1. Maintenance of premises.

In order to promote the general welfare of the town and the safety, health, peace, good order, comfort, convenience and morale of its inhabitants, all owners, occupants and persons in charge of real property, including vacant lots, shall at all times maintain such premises in a clean and sanitary condition, free from stagnant water, weeds, filth, trash, garbage, refuse, litter, unsightly objects and other substances which might endanger the health or safety of other residents of the town.

(1) Weeds.

- a. *Definitions.* The following words, terms and phrases, when used in this subsection (1), shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Neglected property includes any property which contains weeds that violate the provisions of this section and whose owner/occupant has failed to cut the weeds after receiving notice from the town.

Nuisance means the doing of any act or the omission to perform any duty, or the permitting of any condition or thing to exist that endangers life or health, obstructs or interferes with the reasonable or comfortable use of public or private property, tends to depreciate the value of the property of others, or in any way renders other persons insecure in the life or the use of property. Wherever the term "nuisance" is used in this section, it shall be deemed to mean a public nuisance.

Owner means and includes the owner or occupant of any parcel of real estate, including, but not limited to, any person in possession thereof having charge thereof as an

executor, administrator, trustee, guardian or agent, and the beneficiary of any easement or right of use thereof.

Person includes individuals, corporations, partnerships and all other legal entities which may hold title to real or personal property.

Premises means a tract of real property with a building thereon and shall include its grounds and other appurtenances.

Property means both real property and personal property.

Public nuisance means a nuisance which is common to the public generally and which injures those citizens generally who may be so circumstanced as to come within its influence. A nuisance shall be deemed to be public if it is committed in such a place and in such a manner that the aggregation of private persons injured thereby is sufficiently great so as to constitute a public annoyance and inconvenience.

Safety means any situation that creates a health hazard, a personal or public safety hazard, or creates a need for expedited enforcement action due to the nature of the condition that constitutes more than a nuisance.

Weeds includes any plant, grass or other vegetation (herbaceous or woody) over 12 inches in height, excluding trees, ornamental shrubbery, vegetable and flower gardens purposefully planted and maintained by the property owner or occupant free of weed hazards or nuisances, cultivated crops, or undisturbed woodlands not otherwise in violation. The term "weeds" includes any plant, grass or other vegetation that is prohibited by state or federal law.

- b. *Prohibited growth.* It shall be unlawful for the owner or occupant of any property, either vacant or developed, situated in the town to allow weeds to reach a stage of growth to a height of 12 inches or more. Prohibited growth shall include weeds or grasses 12 inches in height or taller situated within 15 feet of any structure, or protruding beyond the boundaries of such property or which constitutes a health or safety hazard, or which is known to harbor nuisance wildlife as defined by Code of Virginia, § 29.1-100, which shall also include rats, or vermin, snakes, or poisonous or vicious animals. This subsection shall not apply to land zoned for or in active farming operation.
- c. *Violation.* Any owner or occupant coming under the provisions of this section who shall fail to cause weeds to be cut and/or removed from such property or premises within the time specified will be deemed to be in violation of this section.
- d. *Notice to cut and/or remove.* The owner or occupant of property situated in the town shall be, and is hereby, required to cut and/or remove all weeds. It shall be the duty of the town manager to serve notice on the owner to cause such grass, weeds, or other foreign growth to be cut and/or removed from the premises within 15 calendar days after notification. Only one written notice per growing season to the owner is required.
- e. *Service of notice; generally.* All notices to comply with the provisions of this section shall be served either by personal service, publication, posting or by certified mail, and such procedures shall be deemed the equivalent of personal service. If the owner of any unoccupied lot or premises is not a resident of the town and does not have an agent in the town upon whom notice can be served, notice may be given by sending the same by certified mail to the last-known address of the nonresident owner. The last-known address of the owner shall be that shown on the current real estate tax assessment books or current real estate tax assessment records. Nonresident owners shall also have 15 calendar days to comply with said directive.
- f. *Enforcement.*
 - 1. The town manager shall be responsible for enforcing the provisions of this section. The town manager shall have the authority to delegate duties and powers to other appropriate agencies and individuals to assist in the enforcement of this section.

Whenever the term "town manager" is used in this section, it includes all the agencies or individuals to which the town manager delegates enforcement powers, except where the context clearly indicates a different meaning.

2. The town manager shall have the authority, ~~whenever deemed appropriate~~ after notice is given to the owner, ~~and upon recommendation of the property maintenance board~~ to have such weeds or grasses on property or on such portions of the property as deemed appropriate cut and/or removed and to restrict their future growth by the town's agents or employees, in which event the costs and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the town in the same manner as taxes and levies are collected, and all unpaid costs and expenses shall constitute a lien against such property. Any owner may avoid any liability to the town, provided abatement is completed prior to the initiation of the abatement process by the town's designated agent.

g. *Application for removal of weeds.*

1. Whenever any town resident or property owner believes that the provisions of this section are being violated, such person shall notify the town manager in writing ~~and the property maintenance board~~ and the town manager shall examine the condition of the property described in such notice. If the ~~property maintenance board~~ town manager determines that the provisions of this section are being violated, ~~the board will report the violation to the town manager for enforcement.~~ tThe owner/occupant of the offending property shall be given notice as provided in this section and shall be requested to remove the weeds from the property within 15 calendar days of the ~~delivery or mailing of the notice~~ posted notice or the certified mailing of the notice.
2. If the owner of the property cannot be found within the town after a reasonable search, notice shall be sent by ~~registered~~ certified mail, return receipt requested, to the last-known address of the owner as provided in this section, and a copy of the notice shall be posted on the property in a conspicuous place and such procedures shall be deemed the equivalent of personal service.
3. If the owner/occupant of the property does not cut the weeds within 15 calendar days of the ~~delivery or mailing of the notice or within 15 calendar days of the posting of the notice~~ posted notice or the certified mailing of the notice, whichever period is greater, the town manager shall declare the property to be neglected property, and such designation shall remain in full force and effect until the owner gives the town manager adequate assurances that the property will be properly maintained in regard to weeds in the future.
4. Once ~~the property maintenance investigation board~~ the town manager designates a parcel of property to be neglected property, the person or organization that is contracted by the town to abate such nuisances shall be authorized to go onto the property as an agent of the town at the owner's sole cost and expense to cut, remove and restrict the future growth of the offending weeds. The agent shall be responsible for taking all precautions necessary to cut, remove and restrict the growth of offending weeds in a safe and proper manner.
5. Neither the town nor its employees and officials shall be liable for any damages or injuries caused by cutting, removing or restricting the future growth of weeds from a neglected property and shall not be liable for any damages, injuries or expenses incurred by any agent or any other person in cutting, removing or restricting the future growth of weeds.
6. The provisions of this section shall not authorize an agent to enter onto property to remove trees or shrubbery either alive or dead unless the branches, limbs, or other parts of the trees or shrubbery extend or protrude onto private or public property in a manner which constitutes a danger to citizens or property or where the limbs or branches are likely to fall in such a manner as to endanger private citizens or property.

If the property maintenance investigation board determines that the trees or shrubbery constitute a danger or hindrance to the public, private citizens or private property, the agent may be authorized to cut and remove such trees and shrubbery that have been designated for removal by the property maintenance investigation board in accordance with the provisions of this section.

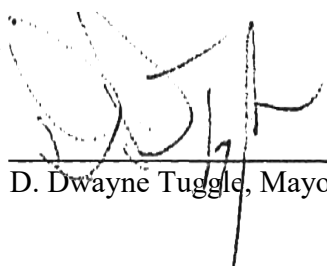
h. *Costs of expenses chargeable to owner.*

1. Cost and expenses incurred for abatement of nuisances shall be assessed upon the owner of the property. The assessment shall be collected by the town as taxes and levies are collected. Every charge authorized by this section with which the owner of any property shall have been assessed and which remains unpaid shall constitute a lien against such property. Included in every charge to the property owner in the abatement cost shall be an administrative service charge of 20 percent of the abatement cost and interest on any unpaid balance of the abatement cost accruing at a rate of ten percent per annum from the date of the assessment until paid.
2. With respect to all such accounts remaining unpaid 14 days after being assessed, a notice of the lien of the special assessment shall be prepared by the treasurer and recorded in the clerk's office of the circuit court. The treasurer may take any appropriate steps, including initiating court action, to enforce the lien to satisfy the special assessment.

(2) *Safety.*


- a. If a written complaint is made to the town manager regarding unsafe or unsanitary conditions existing upon a property, the town manager shall, as soon as practical, perform an inspection of the property. Under a finding by the town manager that a health, safety or fire hazard exists on any premises, the town manager shall give written notice to the owner, occupant or person in charge of such premises to take such action as may be necessary to abate such violation within ten days or within such lesser period as may be provided in such notice, which may be served in any manner authorized by law for the service of process. For the purposes of this subsection, nuisance weeds alone, absent any condition which otherwise constitute a health, safety or fire hazard, are not considered a safety hazard. Protruding or dead trees as described in subsection (1)g.6 of this section may be considered a safety hazard.
- b. If any owner, occupant or person in charge of any premises to whom such notice is given as provided in subsection (2)a of this section fails to comply with such notice within the time therein specified, the town manager shall proceed to have done that which was directed in such notice to be done, and the expense so incurred shall be chargeable to and paid by the owner or occupant of the premises involved and may be collected by suit or motion or by distress sale, or by any other means by which taxes and levies are collected. That this Ordinance shall be effective on May 10, 2023.

This ordinance was adopted on May 10, 2023.



D. Dwayne Tuggle, Mayor

ATTEST:



Clerk of the Council