

Nuisance Ordinance

Town of Cameron, NC

Rationale and Authority

Nuisance Ordinances exist to address the concerns of our residents regarding the image, appearance, health, safety and welfare of the town and its environs. Abatement will be pursued using a variety of means in a judicious, fair and equitable application of all local codes and ordinances.

NCGS 160A-193 states “a city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. The expense of the action 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.”

I. General Nuisance

Section 1: Unlawful Junk Storage

A) The existence of any junked, inoperative or abandoned ice box, freezer, refrigerator, stove, washer, dryer, glass, building material, building rubbish or similar items or appliances, in an area which is visible from any public street or highway, or from the premises of any adjoining property owner is declared to be dangerous and prejudicial to the public health and safety.

B) It shall be unlawful for any person to keep, store or knowingly permit the keeping or storing of, on any property in the town, owned by or under the control of the person, any junked, inoperative or abandoned ice box, freezer, refrigerator, stove, washer, dryer, glass, building material, building rubbish or similar items or appliances, in an area which is visible from any public street or highway, or from the premises of any adjoining property owner.

Section 2: Deemed unlawful

It shall be unlawful for the owner or occupant of any lot or parcel of land in the Town of Cameron, including the Town's extraterritorial jurisdiction, to permit to exist on any such lot or parcel of land any condition which may be declared to be noxious, detrimental to health or to constitute a nuisance.

Section 3: Enumeration

The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the Town of Cameron and its extraterritorial jurisdiction, excluding any area zoned RA (Ag), and are found, deemed, and declared to be public nuisances wherever the same may exist and the creation, maintenance, or failure to abate such nuisances is hereby declared unlawful.

1. Any condition which is a breeding ground or harbor for mosquitoes or a breeding ground or harbor for rats or other pests.
2. Any place of weeds, grass or other ground cover over eight (8) inches in height that is within two hundred (200) feet of the property line of an inhabited residence or business firm.
3. An open place of collection of water where insects tend to breed.
4. An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials or objects of a like nature.
5. An open place of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind.

6. Any furniture, appliances, or other metal products of any kind or nature openly kept which have rough or jagged edges of metal or glass.
7. Any accumulation of rubbish, trash, old building materials or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation of mice, snakes, or vermin of any kind which is or may be dangerous or detrimental to the public health.
8. Any condition detrimental to the public health which violates the rules and regulations of the county health department.

Section 4: Notice to Abate

Whenever it shall come to the attention of the Zoning Enforcement Officer that there exists on any lot or parcel of land in the Town and its Extraterritorial Jurisdiction any of the conditions enumerated in Section 1, Section 2 or Section 3, the Zoning Enforcement Officer shall forthwith give the owner a written notice, through certified mail, to promptly abate such conditions within fifteen (15) calendar days from the receipt of such written notice.

Section 5: Enforcement Penalty

- Any violation of this ordinance or failure to abide by any lawful order issued pursuant to this ordinance shall be deemed a misdemeanor or infraction and shall be punishable as provided in G.S. § 14-4.
- A violation of this ordinance or any order issued hereunder shall also be a civil offense and shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00) per day. Any landowner violating this article shall be issued a written citation in accordance with Section 4 of this ordinance.
- Each day(s) continuing violation shall be a separate and distinct offense.
- In addition to the penalties imposed under subsections (1) and (2) above, the provisions of this ordinance 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 ordinance or at law or equity.
- This ordinance may be enforced by one (1), all, or a combination of the remedies herein.

II. Abandoned, Nuisance and Junk Motor Vehicles

Section 1:

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

1. A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the Town and its extraterritorial jurisdiction and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.
2. A **motor vehicle** is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.
3. An **abandoned motor vehicle** is one that:
 - a. Has been left upon a street or highway in violation of a law or ordinance prohibiting parking.
 - b. Is left on property owned or operated by the city for longer than twenty-four (24) hours.
 - c. Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two (2) hours.
 - d. Is left on any public street or highway for longer than seven (7) days or is determined by law enforcement to be a hazard to the motoring public.
4. A **junked motor vehicle** is an abandoned motor vehicle that also:
 - a. Is partially dismantled or wrecked.
 - b. Cannot be self-propelled or moved in the manner in which it was originally intended to move.
 - c. Is more than five (5) years old and worth less than fifty dollars (\$50) as provided by the municipality in an ordinance adopted under this section.
 - d. Does not display a current license plate.
 - e. Exception: a motor vehicle in the process of being repaired/rebuilt, under the control and supervision of the property owner, with the intent of registering or removing the repaired/restored vehicle will not be in violation. No more than two vehicles may be permitted at any one time.
5. A **Nuisance Vehicle** is a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- a. A breeding ground or harbor for mosquitoes, other insects, rats, or other pests.
- b. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height.
- c. A point of collection of pools or ponds of water.
- d. A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor.
- e. One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.
- f. So situated or located that there is a danger of it falling or turning over.
- g. One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind.
- h. One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.
- i. Any other vehicle specifically declared a health or safety hazard and a public nuisance by the Board of Commissioners.

Section 2: Administration

The authorized official of the Town shall be responsible for the administration and enforcement of this ordinance. This official shall be responsible for the administering the removal and disposition of vehicle determined to be **abandoned** on the public streets and highways within the Town and its extra territorial jurisdiction and on property owned by the Town. The zoning enforcement officer shall be responsible for administering the removal and disposition of **abandoned, nuisance, or junked** motor vehicles located on private property. The Town may, on an annual basis, contract with private tow truck operators or towing business to remove, store, and dispose of abandoned vehicles, nuisance vehicles, and junked vehicles in compliance with this ordinance and applicable state laws. Nothing in this ordinance shall be construed to limit the legal authority or powers of officials of the Town and Fire Department in enforcing other laws or in otherwise carrying out their duties.

1. **Abandoned** vehicle unlawful; removal authorized.
 - a. It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned.
 - b. Upon investigation, proper authorizing officials of the Town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.
2. **Nuisance** vehicle unlawful; removal authorized.
 - a. It shall be unlawful for the registered owner of person entitled to possession of a motor vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is located leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
 - b. Upon investigation, the authorizing official may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle, and order the vehicle removed.
3. **Junked** motor vehicle regulated; removal authorized.

- a. It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- b. It shall be unlawful to have more than one (1) junked motor vehicle on the premises of public or private property. Single, permitted junked motor vehicles must strictly comply with the location and concealment requirements of this section.
- c. Subject to the provisions of subsection d) of this section, upon investigation, the authorizing official may order the removal of a junked motor vehicle as defined in the article after finding, in writing, that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on 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. The following, among other relevant factors, may be considered:
 - i. Protection of property values.
 - ii. Promotion of tourism and other economic development opportunities.
 - iii. Indirect protection of public health and safety.
 - iv. Preservation of the character and integrity of the community.
 - v. Promotion of the comfort, happiness, and emotional stability of area residents.
- d. Permitted concealment or enclosure of a junked motor vehicle is subject to the following:
 - i. One (1) junked motor vehicle, in its entirety, can be located in the rear yard as defined by the Town's zoning ordinance if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering. The authorizing official has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate.
 - ii. More than one (1) junked motor vehicle. Any other junked motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations.

4. Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements:

- a. Except as set forth in subsection 3 an abandoned, nuisance, or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to the possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the name(s) and mailing address(es) of the registered

owner or person entitled to the possession of the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice shall retain a written record to show the name and address to which mailed, and the date mailed. If such names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the Town on a specified date – no sooner than seven (7) days after the notice is affixed. The notice shall state that the vehicle will be removed by the Town on a specified date, no sooner than seven (7) days after the notice is affixed – OR – mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

- b. With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens such appeal shall be made to the board of commissioners in writing, heard at the next regularly scheduled meeting of the board of commissioners, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

5. Exceptions to prior notice requirement: The requirement of this article that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstance where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include:

- a. *Vehicles abandoned on the streets.* For vehicles left on public streets and highways the Board of Commissioners hereby determines that immediate removal of such vehicles may be warranted when they are:
 - i. Obstructing traffic
 - ii. Parked in violation of an ordinance prohibiting or restricting parking
 - iii. Parked in a non-stopping or standing zone
 - iv. Parked in loading zones
 - v. Parked in bus zones
 - vi. Parked in violation of temporary parking restrictions imposed under Code sections.
- b. *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicles left on Town-owned property other than the streets and highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety, and welfare. By way of illustration and not of limitation, such circumstance includes vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles

parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

6. Removal of Vehicles; post towing notice requirements.

- a. Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the Town, be removed to the Town property by the tow truck operator or towing business contracted to perform such services for the Town. Whenever such a vehicle is removed, the authorized Town official shall immediately notify the last known registered owner of the vehicle. Such notice shall include the following:
 - i. The description of the removed vehicle.
 - ii. The location where the vehicle is stored.
 - iii. The violation with which the owner is charged, if any.
 - iv. The procedure the owner must follow to redeem the vehicle.
 - v. The procedure the owner must follow to request a probable cause hearing on the removal.
- b. The Town shall attempt to give notice to the vehicle owner by telephone. However, whether or not the owner is reached by telephone, written notice, including the information set forth in subsections (i) through (iv) above, shall also be mailed to the registered owner's last known address, unless the notice is waived in writing by the vehicle owner or his/her agent.
- c. If the vehicle is registered in this state, notice shall be given within twenty-four (24) hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within seventy-two (72) hours from the removal of the vehicle.
- d. Whenever an abandoned, nuisance, or junked motor vehicle is removed, and such vehicle has no valid registration plates, the authorizing official shall make reasonable efforts, including checking the vehicle identification number (VIN), to determine the last known registered owner of the vehicle and to notify him/her of the information set forth in subsection (i) through (v) above.

7. Right to probable cause hearing before sale or final disposition of vehicle.

After the removal of an abandoned vehicle, nuisance vehicle, or junked motor vehicle the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the county magistrate designed by the chief district court judge to receive such hearing requests. The magistrate will set the hearing within seventy-two (72) hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. § 20-219.11, as amended.

8. Redemption of vehicle during proceedings.

At any state in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of such fees and charges to the Town Clerk. Upon regaining possession

of a vehicle, the owner or person entitled to possession of the vehicle shall not engage in further violations of this article.

9. Sale and disposition of unclaimed vehicle.

Any abandoned, nuisance, or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the Town and in accordance with G.S. § Ch. 44A, Art. I.

10. Conditions on removal of vehicles from private property.

As a general policy, the Town will not remove a vehicle from private property if the owner, occupant, or lessee of such property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the Town from private property without a written request of the owner, occupant, or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the authorizing officer. The Town may require any person requesting the removal of an abandoned, nuisance, or junked motor vehicle from private property to indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

11. Production against criminal or civil liability.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance, or junked motor vehicle, for disposing of such vehicle as provided in this article.

12. Exceptions

Nothing in this ordinance shall apply to any vehicle:

- a. Which is located in a bona fide "automobile graveyard" or "junkyard" as defined in NC G.S. § 136-143, in accordance with the "Junkyard Control Act", NC G.S. § 136-141 et seq.
- b. Which is in an enclosed building.
- c. Which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise.
- d. Which is in an appropriate storage place or depository maintained in a lawful place and manner by the Town.

13. Unlawful removal of impounded vehicle.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the Town any vehicle which has been impounded pursuant to the provisions of the Code unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

III. Noise

Section 1: Prohibited generally

It shall be unlawful for any person or group of persons to make, cause, continue to cause or continue to make any loud, raucous, or disturbing **noise** which term shall mean: any sound because of its volume, duration, or character annoys, disturbs, injures, frightens, or endangers the comfort, health, safety, or peace of reasonable persons with ordinary sensitivities, or disrupts the peaceful use and enjoyment of public or private property within the Town.

Section 2:

The following acts are declared to make and/or cause **noises** that are loud, raucous, or disturbing (as defined above) in violation of this chapter, but such acts shall not be deemed to be exclusive:

1. To produce **noise** from any type of motorized vehicle including but not limited to automobiles, trucks, busses, motorcycles, model cars, minibikes, go carts, all-terrain vehicles, unlicensed motorized vehicles, motorized toys, or any other type of motorized vehicle in a manner as follows:
 - a. To use or permit to be used any motorized vehicle that is so out of repair, or loaded, or otherwise operated or maintained in a condition such that the vehicle creates loud and unnecessary grating, grinding, rattling or any other loud, raucous, or disturbing **noise**.
 - b. To operate any motorized vehicle without a muffler, or with a defective or damaged muffler, such that the vehicle emits an unreasonably loud, annoying, or disturbing **noise**, or to operate any motorized vehicle with a muffler that is constructed or built to intentionally emit an unreasonably loud, annoying, or disturbing **noise**.
 - c. To sound any horn or any type of signal device from, on, or in any type of vehicle except when the horn or signal is used as a warning device.
 - d. To use any siren or similar device upon any vehicle, other than police, fire or other emergency vehicles or required by law to maintain such a device.
 - e. To race the engine of any motor vehicle while such a vehicle is not in motion, except when necessary to do so in the course of repairing, adjusting, or testing the same.
 - f. To drive a motor vehicle in such a manner as to cause a tire or tires to spin, skid, slide or slip and thereby make loud, raucous, disturbing, or excessive **noise**. This includes, but is not limited to, the operation of a motor vehicle in such a manner that the friction between the tires and pavements create or make a loud, disturbing or unnecessary **noise**. This is commonly known as "burning rubber" or "scratching off."
 - g. To play or operate any radio, cassette player, cd/dvd player, or any other sound producing device, instrument, or apparatus installed in and/or located in, on, or

adjacent to any type of motorized vehicle such that the speaker volume is clearly audible from more than thirty (30) feet from the vehicle regardless of whether said vehicle is traveling on a public or private street, parked on public or private property, or stopped in traffic. The operator of said vehicle is the responsible party.

- h. To create any loud, raucous, or disturbing **noise** in connection with the loading or unloading of any vehicle, or the opening and destruction of bales, boxes, crates and containers.
2. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated within the Town limits any engine break, compression break or mechanical exhaust device designed to aid in the breaking or deceleration of any vehicle that results in excessive, loud, unusual or explosive noise from such vehicle, unless necessary to avoid imminent danger.
 - a. Engine break or engine retarding break means "Dynamic Brake," "Jake Brake," "Jacobs Brake," "C-Brake," "Paccar Brake," transmission brake or any other engine retarding brake system that alters the normal compression of the engine and subsequently releases that compression.
 - b. Signs stating "Vehicle Noise Laws Enforced" or "Engine Brake Ordinance Enforced" may be installed at locations deemed appropriate. No signs shall be installed on a state-maintained highway without a permit from the North Carolina Department of Transportation.
 - c. Emergency vehicles shall be exempt from the application of this ordinance.
3. To play at any time of any day any radio, phonograph, musical instrument, television, "boom box," or any electronic sound producing device with a volume louder than is necessary for the convenience of the person or persons who are specifically listening to or operating the sound producing device, or playing or operating said device in such a manner or with such volume as to annoy or disturb the quiet, comfort or repose of any person or persons in any dwelling, other type of residence, church, or on any public property. The Town may issue permits to qualified organizations for parades or to produce music, speeches, or general entertainment.
4. To yell, shout, whistle, sing or make any other loud, raucous, or disturbing **noise** resulting from any party, gathering, or social or domestic activity.
5. To keep, harbor, or authorize to keep or harbor any animal which causes any type of frequent or continual **noise** for five (5) minutes or more than disturbs the comfort, quiet, or repose of any person or persons. Types of animal **noises** include but are not limited to barking, crying, howling, meowing, singing, chirping, and scratching.
6. To erect, excavate, demolish, alter, or repair any building in a residential or business district other than between the hours of 7:00 a.m. and 9:00 p.m. except in the case of urgent necessity in the interest of public safety.
7. To play any drum, loudspeaker or other instrument or device for the purpose of attracting attention to any performance, show, or sale or display of merchandise.
8. To conduct, operate, or maintain any garage, service, or filling station in such a manner as to cause loud, raucous, or disturbing **noises** between the hours of 9:00 p.m. and 7:00 a.m.
9. To fire or discharge any type of firearm, explosive, firework, or similar device except as allowed by permit from the Town, or as allowed by law.

Section 3: Penalties and enforcement

1. Any person, group of persons, firm, corporation, or organization that violate any provision of this section may be subject to a misdemeanor, punishable as provided in N.C.G.S. § 14-4.
2. The term “violator” shall mean the person(s) creating or allowing to create any unlawful **noise(s)**, the operator(s) and/or owner(s) of any device creating any unlawful **noises(s)**, or the person(s) who has(have) legal or actual control over devices, premises, or properties from which an unlawful **noise(s)** emanates.
3. Any person, group of persons, firm, corporation, or organization that violates any provision of this section may also subject the violator to a civil penalty of fifty dollars (\$50.00). If such penalty is not paid within ten (10) days, then the Town may seek to recover the penalty by filing a civil action in the matter of debt.
4. The provisions of this section may be enforced by the town clerk, the police department, or by other town employees designated by the board of commissioners.
5. The Town may decline any request for a permit to exceed lawful sound limits.
6. The Town may enforce this section through any appropriate remedy available by law or equity.

IV. Animal Control

Section I: Definitions

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

Abandonment means the willful discarding or deserting of a live animal, leaving an animal for a period in excess of 12 hours without providing adequate food, water or shelter for the duration of the absence or releasing or dumping an animal from a vehicle without demonstrating intent to recover the animal.

Animal means every living creature, domestic or nondomestic, but does not include humans

Animal Shelter means any premises designated by the health director for the purpose of impounding and caring for animals

At Large means an animal that is off the property of its owner or keeper and not under physical restraint

Board of Health means the Moore County Board of Health

Boarding means providing for-profit land and/or structure for the care of an animal

Commercial Animal Establishment means any for-profit pet shop, grooming shop, riding school, stable, zoological park, circus, animal exhibition/show or kennel.

Commercial Breeder means one who breeds animals for the primary purpose of offering their offspring for sale to other breeders, pet shops, laboratories, or individuals. (by contrast, a hobby breeder is one who breeds purebred animals occasionally to justifiably improve the breed and not primarily for the purposes of income.)

Commission means the North Carolina Health Services Commission

Confinement means restricted interaction

Domestic Animal means any of various animals, such as dogs, cats, equine, sheep, cattle, goats, hogs, poultry, ferrets, llamas, emus, and/or other animals domesticated by man so as to live and/or breed in a tame condition.

Exotic Animal means any living animal which is strikingly or excitingly different or unusual and not ordinarily kept as a pet or domesticated animal. By way of example, exotic animals shall include, but are not limited to, lions, tigers, apes, monkeys, poisonous reptiles, and poisonous spiders. A hybrid of any animal listed in the example above, regardless of the genetic percentages, shall be deemed exotic.

Exotic Mammal means any mammal designated by the Centers for Disease Control and Prevention, Department of Agriculture or other National or State public health protection agencies as embargoed or prohibited under legal protection orders.

Exotic Reptile means any reptile not native to North Carolina.

Exposed to Rabies means an animal that has been bitten by, or been in the presence of, any animal known or suspected to have been infected with rabies.

Feral Cat means a cat that is un-socialized to humans and has a temperament of extreme fear of and resistance to contact with humans.

Grooming Shop means any establishment, whether operated separately or in connection with another business enterprise, that provides hair and nail clipping, bathing, and other cosmetic services for animals.

Health Department means the Moore County Health Department

Health Director means the health director of the Moore County Health Department

Humanely Destroyed means the destruction of an animal must comply with the guidelines set forth by American Veterinary Medical Association (AVMA), the Humane Society of the United States (HUSU) or the American Humane Association (AHA)

Impoundment means any animal in custody of a person or animal shelter duly authorized by the health director

Keeper means a person having custody of an animal, who keeps or harbors an animal, or who knowingly permits an animal to remain on or about any premises occupied or controlled by such person. Keeper does not include a person keeping a feral cat as a feral care caregiver.

Kennel means any premises wherein a person boards, lets for hire, trains/hunts for a fee, breeds, buys or sells dogs or cats. This shall not include the ownership of dogs/cats which are part of the household or which are maintained adjoining a private residence for commercial hunting.

Law Enforcement Dog means any dog used by a law enforcement agency in the investigation of crimes or as otherwise necessary in the enforcement of the law. These animals are excluded from general requirements of this chapter.

Nonprofit Animal Establishment means therapeutic facility, humane society, animal shelter, The American Society for the Prevention of Cruelty to Animals (ASPCA), animal rescue or welfare groups or assistance animal training facilities. (Recognized by federal or state law as nonprofit)

Non-Domestic Animal means any carnivore, primate, bird, reptile or other venomous animals, regardless of whether it is indigenous to this state, and not included in the definition of domestic animal, and include any hybrid animal.

Nuisance means an animal or group of animals which:

1. Damages, soils, or defiles private or public property; or
2. Interferes with, molests, or attacks persons or other animals; or
3. Is/are repeatedly at large, with exception of feral cats; or
4. Causes insanity, dangerous or offensive conditions; or
5. Chases, snaps at, harasses or impedes pedestrians, bicyclists or vehicles; or

6. By virtue of numbers of assertive tendencies is offensive or dangerous to the public health, safety, or welfare; or
7. Is diseased or dangerous to the public health; or
8. Habitually makes disturbing noises, including but not limited to, continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbances or discomfort to reasonable persons of ordinary sensibilities in close proximity to the premises where the animal is kept or harbored.

Owner means any person, group of persons, firm, partnership, corporation, organization or association that keeps or harbors an animal, assumes care of an animal or acts as a custodian of an animal, unless the animal is being boarded for a fee. The owner has the right of property in the animal and is responsible for the care, actions and behavior of his/her animal(s) at all times. Owner does not include a person keeping a feral cat as a feral cat caregiver.

Patrol Dog means a dog that is trained or conditioned to attack or otherwise respond aggressively, but only upon command from a handler either on or off lead.

Person means any individual, corporation, partnership, organization, or institution commonly recognized by law as a unit.

Pet means any domestic animal kept for pleasure rather than utility

Pet Shop means any commercial establishment whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells or boards any species of animal.

Restraint means that the condition or behavior of an animal is:

1. Controlled by means of a leash or other like device
2. Sufficiently near the owner or handler to be under his/her direct control and is obedient to that person's commands; or
3. Within a vehicle being driven or parked; or
4. Within the property limits of its owner or keeper

Riding school or stable means any place which has available for hire, boarding and/or riding/driving instruction for any horse, pony, donkey or burro.

Security Dog means any dog used, kept or maintained within the county a/o municipality for the purpose of protecting any person or property. Any such dog may be further classified as a patrol dog, sentry dog or watch dog, as defined in this section.

Sentry Dog means a dog that is trained or conditioned to attack or otherwise respond aggressively without command.

Stray means any domestic animal without identification and rabies tags, that is not under restraint, nor on the property of its owner.

Suspected of having rabies means an animal which is unvaccinated against rabies, has bitten a person or is known, or believed, to have been exposed to rabies.

Trap Neuter Return (TNR) is a feral cat program that is viewed as a viable alternative to euthanasia.

Veterinary Hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, treatment of injuries and prevention of diseases in animals

Viscous Dog or other Animal means a dog or other animal that constitutes a physical threat to humans, domestic animals or livestock, or that approaches any person in an attitude of attack off the owner's property without being teased, molested, provoked, beaten, torture or otherwise harmed, or that has a known tendency of unprovoked attack, or that is trained or being trained for fighting.

Watch Dog means a dog that barks and/or threatens to bite any intruder and that has been specially trained or conditioned for that purpose.

Section II: Agency Authority and Responsibility

The employees of the animal control program of Moore County Shall:

1. Have the responsibility along with law enforcement agencies to enforce all laws of the state and all ordinances within the county in fulfilling this duty; and
2. Enforce and carry out laws of the state and all ordinances of the county pertaining to rabies control; and
3. Be responsible for the investigation of all reported animal bites, the quarantine of any domestic animal involved and suspected of having rabies, for a period of not less than ten days, and for reporting to the health director as soon as practical, the occurrence of any such animal bite and the condition of any quarantined animal; and
4. Be responsible for the seizure and impoundment, where deemed necessary, of any dog or other animal in the country involved in a violation of this chapter or any other county ordinance or state law; and
5. Investigate cruelty or abuse with regard to animals; and
6. Make such canvasses of the county, including homes within the county, as necessary for the purpose of ascertaining compliance with this chapter or state statute; and
7. Keep, or cause to be kept, accurate and detailed records of the following:
 - a. Seizure, impoundment, and disposition of all animals coming into the custody of the animal control program; and
 - b. Bite cases, violations, complaints, and investigations of same; and
 - c. All money belonging to the health department and/or county which were derived from fees, penalties, license tags, the sale of animals or sources other than taxes; and
 - d. Any other matters deemed necessary by the health director.
8. Be empowered to issue notices of violation of this chapter in such form as the health director may prescribe.

Section III: Cruelty to Animals

1. It shall be unlawful for any person to maliciously molest, torture, torment, deprive of necessary sustenance, cruelly beat in any manner, mutilate, kill, wound, maim, disfigure, injure, poison, burn or scald with any substance, drown, abandon, or subject to conditions detrimental to its health or general welfare, any animal, or to cause or procure such action. The words “torture” and “torment” shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the wildlife resources commission, nor to prohibit the animal control officers, or persons duly authorized by the health director or veterinarians from destroying dangerous, unwanted or injured animals in a humane manner, nor to prohibit the lawful use of animals for scientific research.
2. It shall be unlawful for any person to, in any manner, tease, annoy, disturb, molest, or irritate an animal that is confined to the owner’s premises.
3. It shall be unlawful for any owner or keeper to fail to provide his/her animal(s), or an animal entrusted to his/her care, with proper shelter and protection from the weather, sufficient and wholesome food and water to keep his/her animals, or an animal entrusted to his/her care, in good health and comfort, with the opportunity for vigorous daily exercise, humane care, veterinary treatment and care when needed to prevent the spread of infectious diseases, injury or suffering.
4. Proper food, drink, shade, shelter and care shall require:
 - a. That each animal shall, at suitable intervals, and at least once every 24 hours, receive a quantity of wholesome foodstuff suitable for the species’ physical condition and age, and sufficient to maintain an adequate level of nutrition for the animal; and
 - b. That each animal shall have continuous access to a supply of clean fresh potable water, and such water shall be either free-flowing or in a receptacle. If water pans or dishes are used, such pans or dishes shall have weighted bottoms or be mounted or secured in a manner that prevents tipping; and
 - c. That each animal shall have convenient access to shelter appropriate to the species throughout the year. Any artificial shelter shall be structurally sound and maintained in good repair to protect the animal from injury and from the elements and shall be of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. Any shelter which does not protect the animal from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, does not comply with this section. The shelter and any other spaces accessible to the animal and all bedding for the animal shall be dry and maintained in a manner which minimizes the risk of the animal contracting diseases, being injured or becoming infested with parasites. Examples of unacceptable shelter include, but are not limited to, the following: underneath outside cardboard boxes; inside metal barrels, inside temporary animal carriers or crates; shelters located in flood prone areas; or shelters surrounded by waste, debris, obstructions or impediments that may endanger an animal. Acceptable shelter means an enclosure having at least three solid sides, a roof and a solid floor; and

d. That each animal shall receive care and medical treatment for debilitating injuries, parasites and disease, sufficient to maintain the animal in good health and to minimize suffering; and

e. That the living area for each animal being kept confined or restrained shall have adequate drainage such that the animal shall be free to walk or lie down without coming in contact with standing water.

5. Tethering of animals is prohibited; exceptions

a. No person shall tether, fasten, chain, tie, or restrain an animal, or cause such restraining of an animal, to a tree, fence, post, doghouse, or other stationary object, except as noted in (b)

b. No person shall tether fasten, chain, tie, or restrain an animal, or cause such restraining of an animal, unless on a cable trolley system, that allows movement of the animal, and unless the length of the cable along which the tethering device can move is at least ten feet, and the tethering device is of such length that the animal is able to move ten feet away from the cable perpendicularly. No animal may be attached to such a cable trolley system for more than four hours nor from 10:00 p.m. until 6:00 a.m. The owner/keeper must be present on the property or premises where the cable trolley system is located when the animal is attached thereto.

c. No person shall tether, tie, stake or chain any animal where the animal can obstruct, block, or hamper the normal use of any public property or private property without the landowner's consent.

d. No person shall tether, tie, stake or chain any animal to metering device or attempt to obstruct the device such that it prevents any service to be read, disconnected, shut off or interrupted.

e. It is unlawful to attach a chain or wire or other tethering device to, or cause such attachment to, a choke-type or pronged collar.

f. It is unlawful to attach a chain or wire or other tethering device in such a manner that does not allow the animal access to food, water or proper shelter.

6. Declawed cats (cats with front and/or hind claws removed) shall not be permitted as outdoor pets and shall be kept strictly indoors.

7. An animal's primary enclosure shall be constructed of such material, and in such a manner, as to minimize the risk of injury to the animal and shall encompass sufficient usable space to keep the animal in good condition. When an animal is confined, the following minimum space requirements shall be used:

Size of Dog	Pen Size (Sq. feet)
Extra Large: > 26" at withers or > 75 lbs.	48
Large: >20" up to 26" at withers or not > 75 lbs	40
Medium: > 12 " up to 20" at withers or not > 50 lbs.	32
Small: 12 " or less at withers or not > 20 lbs	24

Primary enclosures for cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to cats and to keep other animals out. Each feline older than six months housed in any primary enclosure shall be provided a minimum of four (4) square feet of floor space which may include elevated resting surfaces. Each feline younger than six months shall be provided one and one-half square feet. In all cat enclosures, a receptacle containing clean litter shall be provided for waste. A minimum of one receptacle per three cats is required. No more than twelve (12) cats shall be housed in the same primary enclosure.

Equine:

1. Housing: Each animal shall have reasonable access to shelter appropriate for its state of health. Animals in a normal state of health, as determined by the health director or his/her designee, may be maintained in a pasture environment where shelter provides sufficient protection from sun, wind, rain and other inclement weather. Where this is not available, or for animals in a debilitated state of health, access to a manmade shelter is required. These shelters are to be maintained so as to minimize the opportunity for injury.

Outdoor shelters shall have a minimum of three sides and a waterproof roof sufficient to allow two feet of clearance from the animal's head in an erect position. Space requirements are 150 square feet per house. Drainage must be sufficient to maintain the animal's feet in a dry condition.

2. Fencing. Fencing is to be maintained to ensure that the animal is securely enclosed at all times and that the opportunity for injury is minimized.

3. Food and Water. Each animal shall have unlimited access to a source of clean water. Each animal shall have sufficient hay, grain, pasture, or other feedstuff available on a continuous basis to maintain its normal body weight as determined by the health director or his/her designee.

4. Preventive Care.

a. Each animal's hooves shall be maintained on a regular basis to avoid malformation. Animals with specific hoof conditions requiring specialized treatment shall be provided that service on a regular basis.

b. Each animal shall receive de-worming products sufficient to avoid malnourishment as a result of parasite infestation.

c. Minimum vaccination requirements shall include, but not limited to, rabies vaccination.

d. Animals in a debilitated state shall have access to appropriate veterinary care and treatment in order to minimize pain and suffering.

e. In the event that it is determined that the animal can no longer live a productive pain-free life, it is the responsibility of the owner to ensure that the animal is disposed of, or euthanized, in a humane manner.

f. If the animal is euthanized on the owner's property, it is the responsibility of the owner to see that the animal is buried within 24 hours of its death, at least 100 feet away from any water source, and that the carcass is covered with at least three feet of earth.

g. If the owner of the animal is not able to euthanize and/or dispose of the carcass, Moore County Animal Control may make those arrangements for the owner and bill the owner for the expense.

h. The driver of any vehicle which injures or kills an equine domestic animal should inform the owner of the animal or, failing that, should inform local law enforcement or Moore County Animal Control.

5. When an animal is transported in a motor vehicle, the owner or driver is responsible for maintaining control of the animal at all times during transport, which shall include having the animal under the owner's or driver's restraint when released from the vehicle in a public place, with the exception of law enforcement dogs, or hunting dogs being released on public lands.

6. It shall be unlawful for any person to place or confine or allow such animal to be confined in such a manner that it must remain in a motor vehicle or trailer under such conditions or for such periods of time as may endanger the health or wellbeing of the animal due to heat, lack of food or water, or any circumstance which might cause suffering, disability or death.

7. An animal found confined in a motor vehicle in a public place under weather conditions that endanger its life, as determined by the supervisor of the animal control, an animal control officer, an animal cruelty officer or law enforcement officer, is a violation of this section. Any law enforcement or animal control officer is hereby authorized to enter such vehicle and rescue and impound it. A prominent written notice shall be left on or in the vehicle advising that the animal has been removed under the authority of this section and impounded at the animal shelter.

8. The driver of any vehicle which injures or kills a domestic animal should inform the owner of the animal or, failing that, should inform local law enforcement or Moore County Animal Control.

Fowl:

1. It shall be unlawful for any person to tether any fowl. Fowl used in training or demonstration of hunting dogs are exempt from this provision.

2. If any person, firm or corporation shall sell, or offer for sale, barter or give away as premiums living baby chicks, ducklings or other fowl or rabbits under eight weeks of age as pets or novelties, such person, firm or corporation shall be guilty of a class 3 misdemeanor, pursuant G.S. 14-363.1.

However, this section shall not be construed to prohibit the sale of non-domesticated species of chicks, ducklings, or other fowl, or of other fowl from proper breeder facilities by hatcheries or stores engaged in the business of selling them for purposes other than for pets or novelties.

3. It shall be unlawful to color, dye, stain or otherwise change the natural color of baby chicken, or other fowl or rabbits.

Livestock:

1. It shall be unlawful for any person to maintain, keep, house, or stable any horse, mule, pony, sheep, goat, chicken, or other domestic fowl or livestock in the town within 150 feet of neighboring dwelling, school, church, business, commercial or professional establishment and 200 feet from any front property line. Not more than a total of three (3) horses, mules, ponies, cows, sheep, goats, or other such animals shall be maintained on one (1) lot and such lot must contain no less than one acre for each such animal maintained. No more than a total of four chickens or other domestic fowl shall be maintained on one lot and such lot must contain no less than one acre for each four or fewer chickens or other domestic fowl maintained.

2. All proposed stables shall require site plan review and approval prior to construction or habitation by livestock. In all cases, the structure shall be located so as to give the least possible offense to the occupants or residents of adjoining lots. All such stables shall be cleaned and disinfected once each day and kept free of noxious odors.

3. Animal waste shall be contained or removed by the owner. Animal waste of any kind cannot be placed with yard debris for town pick up. A fine of \$100.00 will be levied for violation.

4. Non-household animals shall be contained on the property with a fence or other acceptable means. The fence surrounding the property shall be of an appropriate height to protect the non-household animal as well as the neighboring property.

(e). Properties keeping or housing livestock regulated by this section as of the date of adoption of this ordinance shall be allowed to keep said livestock without being forced to comply with the provisions stated herein so long as the keeping of such livestock is not discontinued for a period of 180 days or longer.

Trapping:

1. It shall be unlawful to set traps such as Leg Hold, Soft Leg Hold, Offset Leg Hold, Conibear, and Spring Wire Traps within a residential community or within 1,000 feet of a rural residence where domestic animals might run loose, without the permission of the property owner. The owner of such trap shall have his/her name and contact information permanently affixed to the trap.

2. It shall be unlawful for any person to willfully set a trap for the sole purpose of trapping domestic animals (dogs, cats, puppies, kittens) with the exception of live, humane traps.

Section IV: Confinement and control of vicious or dangerous domestic animals

1. It shall be unlawful for any person to keep any vicious, fierce or dangerous domestic animal within the county unless it is confined within a secure building or enclosure or is restrained by means of a leash or other like device and firmly under control at all times.
2. A dog is determined to be vicious at the discretion of the health director or his/her designee as defined in section 1 "vicious dog".
3. If a dog is determined to be vicious, its owner is required to:
 - a. Keep the animal in a secure enclosure with a fence at least six feet high, with an enclosed top and concrete bottom with wire set in concrete and a secure, lockable door or gate; and
 - b. Post a warning sign with international symbols visible on all four sides of the property when there is a vicious dog on the premises; and
 3. Notify the animal control officer immediately if the vicious dog gets loose or attacks a person or another animal

Section V: Animals creating nuisance prohibited

1. It shall be unlawful for an owner or keeper to permit an animal or animals in his/her care to create a nuisance.
2. Compliance shall be required as follows:
 - a. When an animal control officer, law enforcement officer or person duly authorized by the health director observes a violation, the owner or keeper will be provided written notification of such violation and be given 48 hours from the time of notification to abate the nuisance.
 - b. Upon receipt of a written detailed and signed complaint being made to the health director or the animal control office by any person, that any other person is maintaining an animal which is creating a nuisance as defined in this chapter, the health director shall cause the owner or keeper of the animal in question to be notified that a complaint has been received, and shall investigate the situation complained of, and a report and findings thereon shall be reduced to writing.
 - c. If the written findings indicate that the complaint is justified, then the health director, or his/her designee, shall notify in writing the owner or keeper of the animal or animals in question, and said owner or keeper shall be ordered to abate such nuisance within 48 hours.

d. In the event the owner or keeper of the animal or animals is unknown and cannot be identified, the animal(s) will be impounded.

3. It shall be unlawful for a person to fail to refuse to abate the nuisance as required by this chapter.

Section VI: Luring, enticing, and seizing an animal

It shall be unlawful for any person to entice or lure any animal out of an enclosure or off the property of its owner or keeper, or to seize any animal while the animal is held or controlled by its owner or keeper or while the animal is on the property of its owner or keeper.

Section VII: Non-domestic animals prohibited

1. No person shall possess or harbor any non-domestic animal that is dangerous to persons or property or which has the potential for being dangerous to persons or property. This section shall not apply to bona fide circuses or petting zoos.

a. No person shall possess a wolf or wolf hybrid or a coyote or coyote hybrid except as permitted by the North Carolina Wildlife Commission.

Section VIII: Interference with enforcement

It shall be unlawful for any person to interfere with, hinder or molest the employees of the health department or persons duly authorized by this chapter in performing their duties, or to release any animal in the custody of such persons.

Section IX: Feral cats and colonies

1. Caregivers of feral cat colonies shall implement proper management to include as follows:
 - a. Neuter adult cats; and
 - b. Vaccinate cats against rabies; and
 - c. Notch left ear of all vaccinated cats; and
 - d. Manage the health of the colony
2. Animal control will notify a feral cat caregiver prior to removal of any feral cat(s) and caregiver will be given a reasonable period of time to resolve any complaint.
3. Animal control will notify a feral cat caregiver of any feral cat trapped by animal control that has a notched ear prior to euthanasia.

Section X: Vaccination of dogs, cats and equine.

It shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies for any dog or cat four months of age or older and equine six months of age or older. Should it be deemed necessary by the health director that other animals be vaccinated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies for that animal. The time or times of vaccination shall be established by the commission. Rabies vaccine shall be administered only by a licensed veterinarian or by a certified rabies vaccinator.

Section XI: Rabies tag and certificate.

1. Upon complying with the provisions of section X, a rabies tag shall be issued to the owner or keeper of the dog or cat vaccinated. An owner or keeper of equine shall be issued rabies vaccination certificate.
2. It shall be unlawful for any dog or cat owner or keeper to fail to provide the animal with a collar or harness to which are securely attached a current rabies tag as issued under this section and identification tag bearing owner's name and/or telephone number. The collar or harness, with attached tag, must be worn at all times. Cats and equine shall not be required to wear the metallic tag, but the owner of the cat or equine shall maintain the rabies vaccination certificate, with a physical description of the animal, as written evidence to prove that the animal has a current rabies vaccination.
3. Any equine residing in or entering Moore County shall be required to show proof of current rabies vaccination.
4. In addition to all other penalties for violations as prescribed by law, the animal is subject to impoundment in accordance with the provisions of this chapter. If an animal control officer can identify the owner of an animal not wearing a rabies tag, he/she may prove the owner with a written notification of such violation and the owner shall be given 48 hours from the time of notification to obtain and/or show proof of current vaccination.
5. If an animal enforcement office can identify the owner of an animal not wearing a rabies tag, he/she may provide the owner with a warning citation to show proof of current vaccination within 48 hours without automatically impounding the animal.
6. It shall be unlawful for any person to use for any animal a rabies vaccination tag/certificate issued for another animal.

V. OPEN BURNING

15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE

(a) **Open Burning Prohibited.** A person shall not cause, allow, or permit open burning of combustible material except as allowed by 15A NCAC 02D .1903 and .1904.

(b) **Purpose.** The purpose of this Section is to control air pollution resulting from the open burning of combustible materials and to protect the air quality in the immediate area of the open burning.

(c) **Scope.** This Section applies to all operations involving open burning. This Section does not authorize any open burning that is a crime pursuant to G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the authority of the North Carolina Forest Service to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 106-940 through G.S. 106-950. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the North Carolina Forest Service or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1996;
Amended Eff. January 1, 2015; July 1, 2007; June 1, 2004;
Readopted Eff. September 1, 2019.*

15A NCAC 02D .1902 DEFINITIONS

For the purpose of this Section, the following definitions apply:

"Air Curtain Incinerator" means a stationary or portable combustion device that operates by directing a plane of high velocity forced draft air through a manifold head onto an open chamber, pit, or container with vertical walls to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain. These incinerators can be built above or below ground and be constructed with or without refractory walls and floors. These shall not include conventional combustion devices with enclosed fireboxes or controlled air technology such as mass burn, modular, or fluidized bed combustors.

"Air Quality Action Day Code 'Orange' or above" means an air quality index of 101 or greater as defined in 40 CFR Part 58, Appendix G. This includes Codes Orange, Red, Purple, and Maroon.

"Dangerous materials" means explosives or containers used in the holding or transporting of explosives.

"Initiated" means to start or ignite a fire or reignite or rekindle a fire.

"Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value. This term does not include regularly scheduled maintenance or property clean-up activities.

"Log" means any limb or trunk whose diameter exceeds six inches.

"Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.

"Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.

"Occupied structure" means a building where people can be reasonably expected to be present or a building used for housing farm or domestic animals.

"Off-site" means any area not on the premises of the land-clearing activities.

"Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.

"Person" as used in 15A NCAC 02D .1901 means:

- (a) the person in operational control over the open burning; or
- (b) the landowner or person in possession or control of the land when he/she has directly or indirectly allowed the open burning or the Division determined, based upon an investigation into the open burn, that the land owner has benefited from it.

"Pile" means a quantity of combustible material assembled together in one place.

"Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency, or municipal service.

"Public road" means any road that is part of the State highway system or any road, street, or right-of-way dedicated or maintained for public use.

"Refuse" means any garbage, rubbish, or trade waste.

"Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environmental Quality.

"Right-of-way maintenance" means vegetation management, including grass cutting, weed abatement, tree trimming, and tree and brush removal of existing streets, highways, and public places.

"Salvageable items" means any product or material that was first discarded or damaged and then all or part was recovered for future use. Examples of these items include insulated wire, electric motors, and electric transformers.

"Smoke management plan" means the plan developed following the North Carolina Forest Service's smoke management program and approved by the North Carolina Forest Service. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.

"Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

*History Note: Authority G.S. 143-215.3(a)(1);
Eff. July 1, 1996; Amended Eff. January 1, 2015; July 1, 2007;
December 1, 2005; June 1, 2004; July 1, 1998;
Readopted Eff. September 1, 2019.*

15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

(a). All open burning is prohibited except open burning allowed pursuant to Paragraph (b) of this Rule or 15A NCAC 02D .1904. Except as allowed pursuant to Subparagraphs (2)(3) through (b)(9) of this Rule, open burning shall not be initiated in a county that has been forecasted to be in an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day.

(b). The following types of open burning are permissible without an air quality permit.

(1) The open burning of leaves, logs, stumps, tree branches, or yard trimmings, if the following conditions are met:

(A) the material burned originates on the premises of private residences and is burned on those premises and does not include material collected from multiple private residences and combined for burning;

(B) there are no public pickup services available;

(i) to lessen the load pickup services are suspended and open burning is allowed from October 1 through April 1 of each year.

(C) non-vegetative materials, such as household garbage, treated or coated wood, or any other synthetic materials are not burned;

(D) the burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

(E) the burning does not create a nuisance; and

(F) material is not burned when the North Carolina Forest Service or other government agencies have banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this Subparagraph;

2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:

(A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

(B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property where the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:

(i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to,

and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or

(ii)an air curtain incinerator that complies with 15A NCAC 02D .1904 is utilized at the open burning site. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied;(C) Only land-cleared plant growth is burned.

Heavy oils, items containing natural or synthetic rubber, synthetic materials, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;(D)Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

(E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service or other government agencies have banned burning for that area; and

(F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried or transported to:

(i)Facilities permitted in accordance with 15A NCAC 02D .1904 for the operation of an air curtain incinerator at a permanent site; or

(ii)A location, where the material is burned not more than four times per calendar year, which meets all of the following criteria:

(I)at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted;

(II)there are no more than two piles, each no more than 20 feet in diameter, being burned at one time; and

(III)the location is not a permitted solid waste management facility;

(3) campfires and fires used solely for outdoor cooking and other recreational purposes, ceremonial occasions, or for human warmth and comfort and that do not create a nuisance and do not use synthetic materials, refuse, or salvageable materials for fuel;

(4) fires purposely set to public or private forest land for forest management practices for which burning is currently acceptable to the North Carolina Forest Service;

(5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the North Carolina Department of Agriculture and Consumer Services;

- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when the Division has determined that it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
 - (A) the North Carolina Forest Service;
 - (B) the North Carolina Department of Insurance; or
 - (C) North Carolina Community Colleges;
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
 - (A) the regional office supervisor has been notified according to the procedures and deadlines contained in the notification form and the regional office supervisor has granted permission for the burning. The information required to be submitted in the form includes:
 - i) the address of the fire department that is requesting the training exercise;
 - ii) the location of the training exercise;
 - iii) a description of the type of structure or object and amount of materials to be burned at the location of the training exercise;
 - iv) the dates that the training exercise will be performed; and
 - v) an inspection from a North Carolina Asbestos Inspector that the structure being burned is free of asbestos. This form shall be submitted 10 days prior to commencement of the burn. This form may be obtained in electronic format at <https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information> or by writing the appropriate regional office at the address in 15A NCAC 02D .1905 and requesting it.
 - (B) Factors that the regional office supervisor shall consider in granting permission for the burning include:
 - (i) type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items or if the primary purpose of the fire is to dispose of synthetic materials or refuse;
 - (ii) the burning of previously demolished structures. The regional office supervisor shall not consider these structures as having training value;
 - (iii) the burning of motor vehicles. The regional office supervisor may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related

training units if he or she determines that they have training value;
and

(iv) the distance from the location of the fire training to residential, commercial, or institutional buildings or properties.

Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor at least one hour before the burn is scheduled.

(12) fires for the disposal of vegetative material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Parts (b)(2)(A) through (E) of this Rule.

(c) The authority to conduct open burning pursuant to this Section does not exempt or excuse any person from the consequences, damages, or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2; Eff. July 1, 1996;
Amended Eff. June 13, 2016; March 19, 2015; July 3, 2012; July 1, 2007;
December 1, 2005; June 1, 2004; July 1, 1998;
Readopted Eff. September 1, 2019.*

15A NCAC 02D .1904 AIR CURTAIN INCINERATORS

(a) Applicability. This Rule applies to the following air curtain incinerators:

(1) new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2260 or 60.2970 through 60.2974 that combust the following materials:

- (A) 100 percent wood waste;
- (B) 100 percent clean lumber;
- (C) 100 percent yard waste; or
- (D) 100 percent mixture of only wood waste, clean lumber, and yard waste.

(2) new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or municipal sites where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of this Rule.

(b) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood or wood products that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.

(2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.

(3) "New air curtain incinerator" means an air curtain incinerator that began operating on or after the effective date of this Rule.

(4) "Operator" means the person in operational control over the open burning.

(5) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator operates the air curtain incinerator at one facility or site during the term of the permit.

(6) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves the air curtain incinerator to another site and operates it for land clearing or right-of-way maintenance at that site at least once during the term of its permit.

(7) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator that meets all of the following requirements:

(A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts (a)(1)(A) through (C) of this Rule;

(B) combusts debris within the boundaries of an area officially declared a disaster or emergency by federal, state or local government; and

(C) combusts debris for less than 16 weeks unless the owner or operator submits a request for additional time at least 1 week prior to the end of the 16-week period and provides the reasons that the additional time is needed. The Director will provide written approval for the additional time if he or she finds that the additional time is warranted based on the information provided in the request. Examples of disasters or emergencies include tornadoes, hurricanes, floods, ice storms, high winds, or acts of bioterrorism.

(8) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

- (A) grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial, institutional, or industrial sources as part of maintaining yards or other private or public lands;
 - (B) construction, renovation, or demolition wastes;
 - (C) clean lumber; and
 - (D) treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.
- (9) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:
- (A) construction, renovation, or demolition wastes;
 - (B) clean lumber; and
 - (C) wood waste.
- (c) Air curtain incinerators shall comply with the following conditions and requirements:
- (1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection has forecasted to be an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day;
 - (2) the wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
 - (3) no fires shall be started or material added to existing fires when the North Carolina Forest Service, Fire Marshall, or other governmental agency has banned burning for that area;
 - (4) burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m. No combustible materials shall be added to the air curtain incinerator prior to or after this time period;
 - (5) The air curtain incinerator shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in 15A NCAC 02D .1106(b), (c), and (f). This Subparagraph shall not apply to temporary air curtain incinerators;
 - (6) air curtain incinerators shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
 - (7) the owner or operator of an air curtain incinerator shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;

- (8) only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (9) the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

(d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the requirements of this Rule if the following conditions are met:

- (1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in disaster recovery as specified in Subparagraph (b)(7) of this Rule;
- (2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as applicable; and
- (3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air curtain incinerator and the charge rate during all periods of operation is less than or equal to the lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain incinerator.

(e) Permitting. Air curtain incinerators shall be subject to 15A NCAC 02Q .0500.

- (1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0509.
- (2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0510.
- (3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete and submit a permit application no later than 12 months after the effective date of this Rule.
- (4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and submit a permit application 60 days prior to the date the unit commences operation.
- (5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510 shall submit a closure notification to the Director no later than 12 months after the effective date of this Rule.

(f) Opacity limits.

- (1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:
 - (A) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values)

during startup of the air curtain incinerator, where startup is defined as the first 30 minutes of operation.

(B) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) at all times, other than during startup or during malfunctions.

(2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(g) Performance tests.

(1) All initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of this Rule.

(2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 on or before 90 days after the effective date of this rule.

(3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at which the affected air curtain incinerator will be operated, but not later than 180 days after initial startup of the air curtain incinerator.

(4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12 calendar months following the date of the previous test.

(5) The owner or operator of an existing air curtain incinerator that has ceased operations and is restarting after more than 12 months since the previous test shall conduct an opacity test upon startup of the unit.

(h) Recordkeeping and Reporting Requirements.

(1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air curtain incinerator shall submit the following information to the Director:

(A) a notification of intent to construct an air curtain incinerator;

(B) the planned initial startup date of the air curtain incinerator; and

(C) the materials planned to be combusted in the air curtain incinerator.

(2) The owner or operator of a new or existing air curtain incinerator shall do the following:

(A) keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format for five years;

(B) make all records available for submission to the Director or for an inspector's onsite review;

(C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks consisting of 10 6-minute average opacity values;

(D) submit initial opacity test results to the Division no later than 60 days following the initial test and submit annual opacity test results within 12 months following the previous report;

(E) submit initial and annual opacity test reports to the Division as electronic or paper copy on or before the applicable submittal date; and

(F) keep a copy of the initial and annual reports onsite for a period of five years.

(i) In addition to complying with the requirements of this Rule, an air curtain incinerator subject to:

- (1) 40 CFR Part 60, Subpart CCCC, shall also comply with 40 CFR 60.2245 through 60.2260; or
- (2) 40 CFR Part 60, Subpart EEEE, shall also comply with 40 CFR 60.2970 through 60.2974.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10); 143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2; Eff. July 1, 1996; Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, 2004; Readopted Eff. September 1, 2019.