

AN ORDINANCE PROVIDING FOR THE PREVENTION AND ABATEMENT OF PUBLIC NUISANCES IN THE VILLAGE OF MISENHEIMER, NORTH CAROLINA

WHEREAS, the Village of Misenheimer is authorized by North Carolina General Statutes 160A-174, 160A-175, and 160A-193 to summarily remove, abate, or remedy everything in the Village limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety, and to place a lien on the premises where the nuisance occurred; and

WHEREAS, the Village is authorized by North Carolina General Statute 160A-200.1 to notify a chronic violator of the Village's public nuisance ordinance that the Village will take action to remedy the violation, and the expense of the action will become a lien upon the property and shall be collected as unpaid tax; and

WHEREAS, the uncontrolled growth of noxious weeds and grass, and the accumulation of offensive animal and vegetable matter and refuse, causes or threatens to cause a public nuisance dangerous and prejudicial to the public health or safety; and

WHEREAS, public nuisances are occurring within the Village limits on a more frequent basis; and

WHEREAS, the Village currently does not have an ordinance requiring and providing for the abatement of public nuisances.

NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF MISENHEIMER, NORTH CAROLINA that the following public nuisance ordinance be adopted:

Section 1. Public Nuisance Enumerated.

The existence of any of the following conditions on any parcel of land within the corporate limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (a) The uncontrolled growth of weeds, grass or other noxious growth to a height in excess of twenty-four (24) inches.
- (b) An accumulation of stagnant water causing or threatening to cause the inhabitation thereof by mosquitos.
- (c) Accumulation of rubbish, trash, refuse, junk, abandoned materials, metals, lumber, or other things.
- (d) The open storage of any materials or junk that would create a littered condition, which are not in a completely enclosed building or structure, such as dilapidated furniture, appliances, glass, machinery, building materials, automobile parts, tires or any other items which are in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition

(e) Any accumulation of animal or vegetable matter, or any other material, which is offensive by virtue of strong odors, vapors, deterioration or decay, or has become infested with rats, mice, snakes or vermin of any kind.

(f) All disagreeable or obnoxious odors and stench, as well as the conditions, substances or other causes that give rise to the emission or generation of such odors and stench.

(g) Any other condition which violates the rules and regulations of the Stanly County Health Department or which to a person of reasonable intelligence and discretion would constitute a condition dangerous or prejudicial to the public health or public safety.

Section 2. Inspection or Investigation of Public Nuisance.

The Zoning Officer, upon notice from any person of the possible existence of any conditions constituting a public nuisance as provided for in Section 1 of this Ordinance, shall cause to be made such inspection or investigation of the premises as may be necessary to determine whether conditions exist which may constitute a public nuisance as provided for in Section 1 of this Ordinance.

Section 3. Notice to Abate Public Nuisance.

Upon determination by the Zoning Officer that there exists on any property conditions constituting a public nuisance as described in Section 1 of this Ordinance, the Zoning Officer shall notify the owner or occupant thereof by registered or certified mail, return receipt requested, and shall state the reasons why the conditions may constitute a violation and that a hearing will be held before the Zoning Officer at a place therein fixed, not less than ten (10) nor more than thirty (30) days after receipt or mailing of the order. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

Section 4. Hearing on the Public Nuisance.

The owner, occupant, or any party in interest shall have the right to file an answer to the order and to appear in person or otherwise, and give testimony at the place and time fixed for the hearing before the Zoning Officer in the order. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Zoning Officer. The failure of the owner, occupant, or any party in interest, or counsel for the owner, occupant, or any party in interest to appear at the hearing shall constitute a waiver of the owner's right to hearing before the Zoning Officer and an admission of the violations in the order.

Section 5. Order of Abatement.

If a determination is made by the Zoning Officer after the hearing that such conditions constituting a public nuisance exist, the Zoning Officer shall order the owner of the premises, in writing, to cause the prompt abatement thereof.

Section 6. Abatement by Village.

If the person upon whom such notice is served fails, neglects, or refuses to remedy the condition constituting a public nuisance within the required time provided for in the order, the Zoning Officer shall certify such fact to the Village Council, who shall cause such condition to be remedied under the direction of the Zoning Officer.

Section 7. Assessment and Collection of Village's Costs.

The actual costs incurred by the Village in remedying any public nuisance under this Ordinance shall be the actual cost of such proceedings and shall be paid by the owner or occupant of such lot, parcel of land, residence or other building, and, if not paid, shall be a lien upon the lands or premises where the nuisance was declared to be and shall have the same priority and be collected as unpaid ad valorem taxes.

Section 8. Lien on other real property.

The actual costs incurred by the Village in remedying any public nuisance is also a lien on any other real property owned by the person in default within the municipal limits or within one mile of the municipal limits, except for the person's primary residence. A lien established pursuant to this Section is inferior to all prior liens and shall be collected as a money judgment. This Section shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

Section 9. Penalties. Violation of any provision of this Ordinance shall subject the offender to one or more of the following enforcement actions:

- (a) Abatement and assessment as provided in Sections 3-8 of this Ordinance.
- (b) Civil penalties issued by the Zoning Officer in the following amounts:

First Citation	\$ 100.00
Second Citation for Same or Similar Violation	\$500.00

Third and Subsequent Citations
for Same or Similar Violation \$1,000.00

(c) An injunction or other appropriate orders issued of a court of competent jurisdiction.

Section 10. Further remedies.

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances. However, this Ordinance shall not be enforced as a criminal action against any person, firm or corporation violating the provisions of this Ordinance as provided in G.S. 14-4.

Section 11. Effective Date.

This Ordinance shall be in full force and effect from and after the date of its adoption.

DULY PASSED AND ADOPTED BY the Village Council of the Village of Misenheimer, North Carolina, this ____ day of _____, 2017.

**VILLAGE OF MISENHEIMER,
NORTH CAROLINA**

Michael "Frizbee" Herron, Mayor

ATTEST:

**VILLAGE ADMINISTRATOR/CLERK
VILLAGE OF MISENHEIMER,
NORTH CAROLINA**

Anita E. Blair

APPROVED AS TO FORM:

VILLAGE ATTORNEY

DeWitt McCarley