ORDINANCE (2025) 5330

AN ORDINANCE AMENDING CHAPTER 6 OF THE TOWN CODE OF ORDINANCES

WHEREAS, North Carolina General Statutes (NCGS) Section 160A-174 authorizes the Town to adopt ordinances to regulate conditions detrimental to the health, safety, or welfare of its citizens and to define and abate nuisances; and

WHEREAS, NCGS 160A-193 authorizes the Town to summarily remove, abate, or remedy conditions which are dangerous or prejudicial to the public health or public safety; and

WHEREAS, NCGS 160A-200.1 authorizes the Town to provide annual notice to chronic violators of the Town's public nuisance or overgrown vegetation ordinance; and

WHEREAS, the Town's Nuisance Ordinance has been codified in Chapter 6, Health and Sanitation Generally, as Article II, Noxious Weeds and Grasses and Similar Nuisances; and

WHEREAS, the Town's Inspections Department presented its proposed amendments to the Town's Nuisance Ordinance to the Town Council at the March 18, 2025, Regular Meeting; and

WHEREAS, after due notice, the Garner Town Council held a public hearing on April 15, 2025; and

WHEREAS, the Garner Town Council finds the recommended amendments to be in the best interest of the Town.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Garner that the Code of Ordinances is hereby amended as follows:

Section One. That the Code of the Town of Garner, North Carolina, is hereby amended by adding a section, to be numbered Section 6.1, which said section to read as follows:

Sec. 6-1. Authority.

Town council delegates to the town manager its authority pursuant to G.S. section 160A-193 to summarily remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety and its authority to abate nuisances as defined in this chapter pursuant to G.S. section 160A-174.

Section Two. That the Code of the Town of Garner, North Carolina, is hereby amended by adding a section, to be numbered Section 6.2, which said section to read as follows:

Sec. 6-2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

Inspector means a code compliance officer of the town or any other town employee who is designated by the town manager to enforce this chapter.

Violator means the property owner and the person or entity responsible for creating the nuisance or violation, if different from the property owner.

Section Three. That Section 6-16 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-16. Procedures in article not exclusive.

The procedures set forth in this article shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances.

Section Four. That Section 6-17 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-17. Nuisances declared.

The following enumerated and described conditions are found, deemed and declared to be dangerous or prejudicial to public health or public safety and constitute a detriment, danger and hazard to the health, safety, morals and general welfare of the inhabitants of the town and are found, deemed and declared to be public nuisances wherever the same may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

* * * *

(2) A place of heavy growth of weeds or grass over ten (10) inches in height, provided, however, that for purposes of this subsection the term "grass" refers to turf grasses which in common usage and custom are generally mowed to a height of significantly less than ten (10) inches, and this subsection does not apply to plant material within the general botanical category of grasses which naturally grow to and are customarily maintained at heights in excess of ten (10) inches.

(3) A place overgrown with (a) vines, shrubs or other vegetation or (b) accumulated yard waste over ten (10) inches in height;

* * * *

(15) Failure to clean or clear a public street of mud and debris related to a construction, timbering or other similar land use project within twelve (12) hours after notification by the inspector for major and minor thoroughfares or within twenty-four (24) hours after such notification for collector and local streets; however, if it is found by the inspector that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable;

* * * *

(19) A residential structure which is boarded up without having been ordered by an inspector, or pursuant to a permit, except where boarded up in emergency preparedness for an imminent disaster such as a hurricane; or

(20) A place of heavy growth of vines, shrubs, noxious vegetation, or weeds or grasses over ten (10) inches in height, which lies between the abutting property line and the curb, or if there is no curb, the edge of pavement, of the nearest street.

(21) Combustible landscaping materials prohibited:

a. No pine straw or other combustible landscaping materials with a fire rate of spread more than twenty-four (24) inches per minute shall be placed, kept, or stored within ten (10) feet of any buildings with combustible exterior construction.

b. This provision shall not apply to residential dwellings as defined in the North Carolina Residential Building Code, as the same may be amended; nor shall it apply to pine straw falling from trees located on the same parcel as the dwelling.

The owner or occupant of a property which is subject to this subsection may obtain a grace period of up to four (4) months upon the showing of good faith efforts to comply;

(22) Any other condition specifically declared to be a danger to the public health, safety, morals and general welfare of inhabitants of the town and a public nuisance by the town council, which proceeding may be initiated by the town manager before the council after giving written notice thereof. Such notice shall state the condition existing, the location and that the council will be requested on a day certain, after a public hearing at which the person notified may appear and be heard, to declare that the conditions existing constitute a danger to the public health, safety, morals and general welfare of the inhabitants of the town and a public nuisance. After such declaration by the council in the form of an ordinance, the condition will be abated as provided for in this chapter, provided no administrative appeal shall lie from a proceeding pursuant to this subsection.

Section Five. That Section 6-18 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-18. Duty to cause investigation of possible nuisances.

The inspector, upon notice from any person of the existence of any of the conditions described in this article, shall cause to be made by the appropriate county health department official or town official such investigation as may be necessary to determine whether in fact such condition exists as to constitute a public nuisance.

Section Six. That Section 6-19 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-19. Nuisance abatement inspection fee.

A fee for inspecting nuisances defined in this article shall be charged to the owner of such lot or parcel of land. It shall be the duty of the town to mail a statement of such fee to the owner or other person in possession of such premises with instructions that such fee is due and payable within thirty (30) days from the receipt thereof.

* * * *

(3) *Waiver of fees.* The town manager, in consultation with the town attorney, is authorized to waive inspection fees upon a sufficient showing of good cause or other extenuating circumstances.

Section Seven. That Section 6-20 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-20. Duty to give notice of existence of nuisance and require abatement.

(a) Upon a determination that a public nuisance as described in this article exists, the inspector shall notify in writing the owner, occupant or person in possession of the premises in question of the condition constituting such public nuisance and shall order the prompt abatement thereof within ten (10) days from the receipt of such written notice, or if proof of the delivery of the written notice cannot be obtained, within ten (10) days of the mailing of such notice to the owner's last known address as listed with the Wake County Tax Collector, and in addition notice may be published electronically on the town website and posted on a structure on the property if such posting is practical to provide notice.

(b) Within the ten (10) day period mentioned in subsection (a) above, the owner of the property where the nuisance exists or recipient of the notice of violation may appeal the findings of the inspector in accordance with section 6-27. In the event no appeal is taken, the town may proceed to abate the nuisance.

(c) The town manager, in the event an appeal is taken as provided in subsection (b) above and after hearing all interested persons and reviewing the findings of the inspector, may reverse the findings made pursuant to subsection (a) above; but if the town manager shall uphold the findings of the inspector made pursuant to such subsection, the town manager shall issue an order specifically declaring the condition existing on the property to be a danger and hazard to the health, safety, morals and general welfare of the inhabitants of the town and a public nuisance and directing the appropriate town employees to cause the condition or conditions to be abated.

(d) If any of the above-defined nuisances are found to exist, the responsibility for abatement shall rest with the owner, occupant or person in possession of the property or their agent, notwithstanding that the nuisance is found to exist, wholly or in part, within an easement which crosses private property.

Section Eight. That Section 6-21 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-21. Abatement of nuisance by town; violator may have town abate nuisance.

(a) If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within ten (10) days from mailing of the order, the inspector shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or designee.

(b) Any person who has been ordered to abate a public nuisance may within the time allowed by this article request the town in writing to remove such condition, the cost of which shall be paid by the person making such request.

(c) Nuisance abatement by the town in the form of grass cutting will not include:

(1) cutting in areas which are inaccessible,

(2) cutting of living trees,

(3) cutting on any lot which is located more than two hundred (200) feet from an improved lot (meaning one on which there is an existing residence or commercial structure)

(4) cutting in areas specifically demarked and signed as a garden, no-mow, or pollinator area and provided that area is not adjacent to a sidewalk, right-of-way, or property line without specific permission of the adjacent property owner. Demarcation shall be in the form of landscaping pavers, fencing, or other physical barrier.

Section Nine. That Section 6-22 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-22. Cost of nuisance abatement to be charged to owner of premises; statement of charges.

The actual cost incurred by the town in removing or otherwise remedying a public nuisance defined in this article, including an administrative fee as set out in the adopted fee schedule, shall be charged to the owner of such lot or parcel of land, and it shall be the duty of the town to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within thirty (30) days from the receipt thereof.

Section Ten. That Section 6-23 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-23. Lien created upon failure to pay nuisance abatement costs.

(a) In the event charges for the removal or abatement of a public nuisance described by this article are not paid within thirty (30) days after the receipt of the statement of charges as provided for in section 6-22, such charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid ad valorem taxes.

(b) The charges shall also become a lien on any other real property within the town limits or within one mile of the town limits owned by the person or entity in default, except for the person's primary residence, in accordance with G.S. 160A-193.

(c) The town attorney is authorized to enter into settlement agreements regarding the collection or foreclosure of liens.

Section Eleven. That Section 6-24 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-24. Nonconformities.

Maintaining a residential structure with window and/or door openings or other wall openings boarded up for more than six (6) months at any time after March 5, 2012, without having applied for a permit shall be unlawful.

Section Twelve. That Section 6-25 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-25. Annual notice to chronic violators of public nuisance ordinances.

The notice given to violators required in section 6-20 is modified as set forth herein for chronic violators. A chronic violator is a person who owns property whereupon, in the previous calendar year, the town gave notice of violation at least three (3) times under any provision of this chapter. The town may notify a chronic violator of the town's public nuisance ordinance that, if the violator's property is found to be in violation of this chapter, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by registered or certified mail. A copy of the notice may also be sent by regular mail. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

Section Thirteen. That Section 6-26 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-26. Civil penalty provided.

(a) Any violation of this section shall subject the violator to a civil penalty in accordance with section 1-8.

(b) [Reserved]

(c) The violator shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within ten (10) days of its receipt by the violator or appealed to the town manager by giving notice to the town clerk.

(d) The penalty may be recovered by the town in a civil action in the nature of debt if the violator does not pay the penalty within the prescribed period of time after he or she has been issued a citation.

(e) The town manager, in consultation with the town attorney, is authorized to waive civil penalties upon a sufficient showing of good cause or other extenuating circumstances.

Section Fourteen. That Section 6-27 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-27. Nuisance abatement and appeal process.

In addition to other enforcement procedures set forth herein, nuisances may be abated and violations enforced as set forth below.

(1) Where a violator has been issued a written citation by delivery in person, the violator may avoid the penalty becoming past due on the tenth day thereafter only by fully abating the nuisance or filing a notice of appeal within the ten-day period.

(2) Where notices of violation have been issued to both an occupant and a non-occupant owner for the same nuisance condition on the same premises, the filing of a notice of appeal by either the occupant or non-occupant owner shall be deemed to be also on behalf of the other.

(3) When a notice of appeal is filed, the appeal will be heard by the town manager or assistant town manager within five (5) days of the filing of the notice of appeal. Postponements of the appeal hearing will be allowed only for extraordinary reasons. The filing of the appeal shall stay the abatement of the nuisance by the town until a final determination of the appeal, unless the inspector certifies to the town manager or assistant town manager that, because of the facts stated in the certificate, a stay would cause imminent peril to life or property or that, because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this chapter.

(4) If no notice of appeal has been filed, the inspector shall re-inspect the premises as soon as practicable following the expiration of ten (10) days from the notice of violation, and if the nuisance has not been abated, shall take steps to abate the nuisance as set forth in subsection 6-21(a).

(5) Following abatement, the property owner shall be issued a written supplement to the notice of violation detailing the amount of the penalty and the abatement costs. If the penalty and abatement costs are not paid within thirty (30) days of either hand delivery to the property owner, or mailing to the property owner by certified mail, the penalty and abatement expenses may be recovered in a civil action in the nature of a debt, and/or collected in accordance with existing state law, including collecting costs of abatement as a lien on real property.

(6) When any property within the town is allowed by the occupant and/or property owner to be in a condition constituting a nuisance as defined in section 6-17, liability for the violation shall be joint and several such that the violation exists separately and independently on the part of the occupant and any non-occupant owner of the premises. A non-occupant owner who is an offender under this chapter shall, to the extent practicable, be subjected to the penalties, recovery of abatement costs, as well as an occupant, provided that while a civil penalty may be recovered against both owner and non-owner occupant for the same nuisance condition, if the town shall have recovered the abatement costs from one (1) party, it may not recover the same cost from a second party.

Section Fifteen. That Section 6-28 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-28. Enclosing structures.

(a) All structures shall be enclosed with building materials appropriate to the use of the structure sufficient to deter unauthorized access and prevent the entry of rain; where the openings are windows and/or doors, the windows and doors shall be of a material and type appropriate to the structure and designed to be sufficient to deter such entry, except as set forth hereinafter.

(b) A structure shall be boarded up temporarily by the owner if a building inspector orders the same upon investigation, which may arise from a request from the Garner Police Department or Garner Fire Department, finding that there are circumstances that temporary boarding-up is necessary to protect life or property.

(c) The building inspector may give notice of such an order by hand delivery or by posting a copy of the same conspicuously on the premises. If an owner who has been ordered to board up a structure by a building inspector fails to do so within five (5) business days, the building inspector may request the public works department of the town to abate the nuisance and the cost thereof shall become a lien on the owner's property to the full extent provided by law.

(d) An owner who wishes to appeal from an order to board up a structure, or from the denial of a permit, or the denial of an extension of a permit, may appeal within ten (10) days to the town manager, provided, that if the appeal is from an order of an inspector to board up a structure, the appeal must be filed within five (5) days of the issuance of the order and will be set for an administrative hearing as promptly as possible.

Section Sixteen. That Section 6-29 of the Code of the Town of Garner, North Carolina, is hereby amended to read as follows:

Sec. 6-29. Boarding up residential structures by owners.

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(c) A permit to board up a structure shall contain the following information:

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(e) The application fee for a boarding-up permit, or for an extension of such a permit, shall be established in the town's adopted fee schedule.

(f) The duration of a permit allowing a residential structure to be boarded up, and the duration of an order from a building inspector to board up a nonresidential structure, shall be no more than six (6) months, except where an extension is granted pursuant to subsection (e).

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(h) Factors which may justify the extension of a permit include an unresolved insurance claim for repair or replacement (other than inexcusable delay by the homeowner), hardship, and security concerns which cannot reasonably be accomplished by some method other than by boarding up, such as by using high-impact synthetic glazing or similar materials. In evaluating security concerns, the building inspector may consider the use of the property and the value of the structure and its contents, and the burden on the owner and the expense thereof, of securing the property in some other fashion.

(i) Except as ordered or permitted by this chapter, it shall be unlawful to board up a residential structure.

Section Seventeen. That the Code of the Town of Garner, North Carolina, is hereby amended by adding a section, to be numbered Section 6.30, which said section to read as follows:

Sec. 6-30. Swimming pools and ponds.

(a) If a swimming pool or pond constitutes a breeding ground or harbor for mosquitoes or other pests pursuant to section 6-17(1), after notice to the property owner pursuant to section 6-20, the inspector is authorized to treat the swimming pool or pond with insecticide to abate the nuisance and prevent the proliferation of mosquitoes or other pests.

(b) After a duly noticed public hearing, the town council may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety.

(c) The costs of abatement or removal under this section shall be paid by the property owner pursuant to section 6-22 and be a lien on the property pursuant to section 6-23.

Section Eighteen. That all Ordinances or portions thereof in conflict with this ordinance are hereby repealed.

Section Nineteen. This Ordinance shall become effective upon adoption.

Adopted this 15th day of April, 2025.

Buddy Gupton, Mayor

ATTEST:

Stella L. Gibson, Town Clerk

APPROVED AS TO FORM:

Terri A. Jones, Town Attorney