

CLEAN COPY
12-7-17

An Ordinance to repeal, amend and re-ordain Section 34-31 of the Code of the Town of Altavista, 1968, relating to definitions.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 34-31 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

Sec. 34-31. Definitions.

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

Animal means every dog or other animal or fowl owned within the boundaries of the town.

Primary enclosure means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, cage, compartment or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

Public nuisance means: (1) Every activity or condition that endangers life or health, obstructs the reasonable and comfortable use of property, or gives offense to the senses so as to cause a positive and material disturbance or annoyance in the use or occupation of property.

(2) Any animal that:

- a. ~~Molests passersby or passing vehicles or interferes with traffic;~~
- b. ~~Attacks other animals;~~
- c. ~~Trespasses on school grounds and interferes with school activities;~~
- d. ~~Habitually turns over garbage cans of any person other than the owner or custodian thereof;~~
- e. ~~Damages private or public property; or~~
- f. ~~By loud, frequent or habitual crying, barking, howling or other noise causes disturbance of the peace and quiet of any person or neighborhood.~~

(3) ~~Any aggregation of animals creating a foul odor.~~

Responsible party or parties includes, but is not limited to, the owner and/or occupier, and/or possessor of the premises where a public nuisance is located, the owner and/or possessor of any personal property, including animals, which constitutes a public nuisance, the owner or possessor of any material which constitutes a public nuisance which escaped, spilled, or was released and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or negligence caused such public nuisance.

~~Own and Owner~~ Responsible party or parties of an animal means any person having a right of property in an animal and any person who keeps or harbors an animal or has it in his or her care, or who acts as its custodian, and any person who permits an animal to remain on or about any premises occupied by him or her.

Stagnant water shall mean any water that is absent of flow or filtration by natural or mechanical means with the exception of bird baths, fish ponds, flower pots and other containers that are regularly tended by their responsible party or parties.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to add a new Section 34-31.1 to the Code of the Town of Altavista, 1968, relating to specific conditions or activities constituting a public nuisance.

Be it ordained by the Town Council of the Town of Altavista:

1. That a new Section 34-31.1 be added to the Code of the Town of Altavista, 1968, as follows:

Sec. 34-31.1. Specific Conditions or Activities Constituting a Public Nuisance.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a public nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

A. Overgrown vegetation including grass, weeds, brush, or other plants which have reached a stage of growth so as to provide cover or harborage or potential cover or harborage for rats, mice, snakes or other vermin, or to cause a blighting problem, or adversely affect the public health and safety. Such growth between the property line and the street curblin shall also constitute a public nuisance. See also Section 62-151 of this Code.

B. Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things. Outside storage on any property of junk, trash, rubbish, garbage, refuse, litter, waste materials, tires, motor vehicle parts, wheels, metal scraps, plumbing fixtures, broken appliances or machines, and other objects or substances which might harbor rats, mice, snakes and other vermin or which constitute a fire hazard or endanger the public health or safety. Trash or garbage which is placed within a trash can or bin shall not be deemed to be stored outside.

C. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, is open and/or unsecured from entry or presents a fire hazard to the building itself and/or to other properties in the vicinity where it is located; or structures with exposed or faulty electrical wiring, broken windows, visible rotting or molding wood, faulty/rotten roofing or other materials, structures which are likely to collapse or fall over.

D. Vacant buildings. Any vacant or abandoned buildings that are not sealed so as to prevent the entry of persons or rats and other vermin.

E. Any building, structure or other place or location where any activity or condition, which is in violation of local, state or federal law, is conducted, performed or maintained.

F. Outside storage of abandoned or unused objects. Outside storage on a Residential Property of any offensive, unwholesome, unsanitary, or unhealthy item or substance, including but not limited to abandoned, unused, or discarded objects such as household furniture, appliances, equipment, mattresses, tools, lumber, building materials, and other objects that may cause a blighting problem. For the purpose of this subsection,

the term "Residential Property" shall mean a property zoned R-1 or R-2 or a property zoned C-1 or C-2 on which the principal use is a residence. Nothing contained herein shall prohibit storage of materials used in conjunction with a construction project for which a building permit has been issued and which is being diligently pursued.

G. All obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.

H. The carcasses of animals or fowl not disposed of immediately after the death of such animal or fowl. (See Town Code Sec. 62-42(c)(9) for provisions as to pick up by Town).

I. Any aggregation of animals creating a foul odor.

J. Any animal that:

1. Molests passersby or passing vehicles or interferes with traffic;

2. Attacks other animals;

3. Trespasses on school grounds and interferes with school activities;

4. Habitually turns over garbage cans of any person other than the owner or custodian thereof.

5. Damages private or public property; or

6. By loud, frequent or habitual crying, barking, howling or other noise causes disturbance of the peace and quiet of any person or neighborhood.

7. Dogs running at large in violation of Town Code Section 18-87.

K. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, industrial wastes or other substances.

L. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.

M. Emission of dense smoke and/or noxious fumes, for a continuing period in excess of 30 minutes.

N. Artificial light. Any artificial light source, with the exception of standard "dusk to dawn" lights, maintained by a responsible party or parties in a direction or in such a high level of brightness as to place an unreasonable burden on adjoining property.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to add a new Section 34-31.2 to the Code of the Town of Altavista, 1968, relating to public nuisances prohibited.

Be it ordained by the Town Council of the Town of Altavista:

1. That a new Section 34-31.2 be added to the Code of the Town of Altavista, 1968, as follows:

Sec. 34-31.2. Public Nuisances Prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a public nuisance. Violations shall be subject to the provisions of Sections 34-34, 34-35, 34-37 and 34-38.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to add a new Section 34-31.3 to the Code of the Town of Altavista, 1968, relating to animal enclosures to be kept clean.

Be it ordained by the Town Council of the Town of Altavista:

1. That a new Section 34-31.3 be added to the Code of the Town of Altavista, 1968, as follows:

Sec. 34-31.3. Animal enclosures to be kept clean.

The responsible party or parties of any animal kept in a primary enclosure as defined in Section 34-31 in the Town shall keep that enclosure properly cleaned meaning that carcasses, debris, food waste and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with such contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants. Failure to do so shall constitute a violation of this ordinance and shall be subject to abatement as a public nuisance under the provisions in Sections 34-32, 34-34, 34-35, 34-37 and 34-38.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to repeal, amend and re-ordain Section 34-32 of the Code of the Town of Altavista, 1968, relating to procedure.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 34-32 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

Sec. 34-32. Procedure.

- (a) Every public nuisance shall be abated by the ~~owner or occupant~~ responsible party or parties of the property from which the public nuisance emanates, at the expense of such ~~owner or occupant~~ responsible party or parties pursuant to the procedure set forth in this section.
- (b) Whenever an apparent public nuisance is found to exist within the town, the Town Manager or his/her agent shall provide written notice to the responsible party or parties of the property on which such apparent nuisance exists. Mailing of the notice to the responsible party or parties at the address upon which the apparent public nuisance is occurring or the address of the responsible party or parties according to the real property records of the town shall constitute compliance with the requirements of this ordinance. The written notice shall state:
 - (i) The location of the apparent public nuisance;
 - (ii) A description of what constitutes the apparent public nuisance;
 - (iii) A statement of acts necessary to abate or remove the apparent public nuisance;
 - (iv) A deadline reasonable under the circumstances by which the apparent public nuisance shall be abated or removed; and
 - (v) A statement that if the apparent public nuisance is not abated or removed by the deadline, or if the responsible party or parties disputes the existence of such public nuisance the Prior to declaring the activity or condition in question a public nuisance, such owner or occupant responsible party or parties shall be afforded reasonable notice and opportunity for a hearing before town council, which shall, if necessary, specially convene for this purpose.
- (c) If, after such hearing duly held before the town council, the council finds that the activity or condition complained of is in fact a public nuisance, the town council shall give the ~~owner or occupant~~ responsible party or parties a reasonable time to abate the public nuisance, taking into account the urgency of the need for abatement and the difficulty involved in abatement. Failure by the ~~owner~~ responsible party or parties to abate such public nuisance within the time limit shall constitute a violation of this article and shall be subject punishable as prescribed in section. to the provisions of Sections 34-34, 34-35, 34-37 and 34-38.

Upon the failure of the ~~owner~~ responsible party or parties ~~or occupant~~ to abate such public nuisance within the time limit as established by the council, the town manager or any duly authorized agent of the town may abate such public nuisance by whatever means are deemed reasonable and necessary by the town manager.

- (d) Immediate threats to public safety. Should any public nuisance be of such a nature as to pose an immediate threat to the health or safety of the public, such public nuisance shall be abated immediately by the ~~owner or occupant~~ responsible party or parties of the property from which such public nuisance emanates or arises. If such public nuisance is of such a serious and immediate nature as to pose an imminent threat to the health and safety of the community or any part thereof, ~~or should such public nuisance fall within the legal classification of a public nuisance per se, or a public nuisance in fact,~~ the town manager or other duly authorized agent of the town shall cause the town police to serve notice upon the ~~owner or occupant~~ responsible party or parties of the property from which the public nuisance emanates to abate such public nuisance within such period as the town manager deems expedient for public health and safety. If such ~~owner~~ responsible party or parties fails to abate such public nuisance, the town manager or duly authorized agent may take immediate and summary action to abate such public nuisance to the extent that the imminence and the seriousness of such public nuisance are reasonably reduced to a safe level. In this case, the right to notice and hearing to the ~~owner or occupant~~ responsible party or parties of property from which such public nuisance emanates ~~or arises~~ shall be afforded to such responsible party or parties ~~owner~~ as soon after such public nuisance is abated as is possible. The council shall at the hearing render a decision as to the permanent abatement of such public nuisance, and such decision shall be implemented and enforced in the same manner as set forth in subsection (c) of this section. See Sections 34-34, 34-35, 34-73 and 34-38.
- (e) Any decision of town council with regards to a public nuisance after such notice and hearing shall be subject to judicial review by the ~~county~~ Circuit Court of Campbell County upon appeal to such court.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to repeal, amend and re-ordain Section 34-33 of the Code of the Town of Altavista, 1968, relating to animals.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 34-33 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

Sec. 34-33. Animals.

- (a) It shall be unlawful for any person to own an animal that is a public nuisance within the boundaries of the town. Any such public nuisance shall be abated by the ~~owner~~ responsible party or parties and shall be subject to the abatement procedures of this article.
- (b) If a public nuisance under this section disturbs any person, and the police department receives a complaint from such person, the department shall serve upon the ~~owner~~ responsible party or parties of the offending animal notice of the complaint and a copy of this article. Upon the receipt of the second and third complaints within a period of 60 days, the ~~owner~~ responsible party or parties shall be served with similar notices, the third notice stating that the offending animal appears to constitute a public nuisance and is subject to abatement procedures under sections 34-32, 34-34, 34-35, 34-37 and 34-38.
- (c) In addition to the provisions of subsections (a) and (b) of this section, any animal causing a disturbance or annoyance in any manner described, or any combination thereof, shall constitute an apparent public nuisance within the meaning of section 34-31(2), 34-31.1 J. and subject to the abatement procedures under sections 34-32, 34-34, 34-35, 34-37 and 34-38, if no less than three persons familiar with such animal petition the town complaining about the animal causing the disturbance.
- (d) Any ~~owner~~ responsible party or parties of an animal so reported as being a public nuisance shall be subject to the procedure set forth in section 34-32, and, upon a finding by the town council that such animal constitutes a public nuisance, the council shall give the ~~owner~~ responsible party or parties of such animal a reasonable time to take such measures as may be reasonably necessary to abate such nuisance including, but not limited to, confining such animal or removing the animal beyond the town limits. Upon the failure of such ~~owner~~ responsible party or parties to comply with the abatement order of the council within the prescribed time, the town may confiscate the animal and dispose of it according to law. Failure by such ~~owner~~ responsible party or parties to comply with such order shall constitute a violation of this article and shall be enforced and punishable as prescribed in sections 34-34, 34-35, 34-37 and 34-38.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to repeal, amend and re-ordain Section 34-34 of the Code of the Town of Altavista, 1968, relating to costs taxed.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 34-34 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

Sec. 34-34. – Costs of abatement taxed.

Where any public nuisance is abated by the town pursuant to the provisions of this article, the costs of such abatement shall be taxed against the ~~owner or occupant~~ responsible party or parties of the property from which such public nuisance emanates or arises and shall be collectible by the town in any manner provided by law for the collection of state and local taxes. Upon the completion of such abatement, the town manager shall send by certified mail to such ~~owner~~ responsible party or parties a bill for the costs of such abatement with the notation thereon that such charges are collectible by the town in any manner provided by law for the collection of state and local taxes, and that failure to pay such bill within 60 days of the date thereof will result in the institution of collection procedures. Upon the ~~owner's~~ responsible party's or parties' failure to pay such bill by the date set thereon, the town manager may, pursuant to law, institute such collection procedures as he or she may deem necessary.

(Code 1968, § 8-17)

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

Sec. 34-35. – Abatement costs; town property.

Whenever any person or business causes a public nuisance to exist on property belonging to the town lying within or beyond the corporate limits of the town and the town abates such nuisance under this article, such person or business shall be taxed with the costs of such abatement as provided under section 34-34.

(Code 1968, § 8-18)

Sec. 34-36. – Liability imposed by other laws not decreased.

Nothing contained in this article shall be construed as making lawful any act or omission which is unlawful, or as decreasing the liability, civil or criminal, of any person, imposed by law.

(Code 1968, § 8-19)

An Ordinance to repeal, amend and re-ordain Section 34-34 of the Code of the Town of Altavista, 1968, relating to costs taxed.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 34-34 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

Sec. 34-37. – Enforcement by injunction.

Nothing contained in this article shall prevent the town from enforcing the terms of this article by means of injunction obtained in the ~~county~~ Circuit Court of Campbell County.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.

An Ordinance to repeal, amend and re-ordain Section 34-38 of the Code of the Town of Altavista, 1968, relating to civil penalties.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 34-38 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

Sec. 34-38. Penalties for violation of article Civil penalties

~~Any person violating the provisions of this article shall be guilty of a Class 3 misdemeanor.~~

A. Each business day a public nuisance continues after the date set by the town council for its abatement constitutes a separate offense or violation. In addition to liability for the town's costs of abatement, responsible party or parties who fail to comply with a notice issued pursuant to this section requiring them to abate a nuisance shall be subject to civil penalties as follows:

(1) \$50 for the first violation or violations arising from the same set of operative facts; or

(2) \$200 for subsequent violations not arising from the same set of operative facts within 12 months of a first violation.

In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a twelve-month period.

B. Except as provided in this subsection, the imposition of civil penalties pursuant to subsection A. shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. In the event that three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period such violations shall be a Class 3 misdemeanor. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

2. This Ordinance shall become effective immediately upon passage by the Town Council of the Town of Altavista.