

ABANDONED MOBILE HOME ORDINANCE
OF
MCDOWELL COUNTY, NORTH CAROLINA

Section 500 - General Requirements

Section 500.1 Authority

McDowell County hereby exercises its authority to enact abandoned mobile home regulations pursuant to N.C.G.S 153A-121, N.C.G.S 153A-123, and N.C.G.S. 153A-140.

Section 500.2 Jurisdiction

The jurisdiction of this Ordinance shall be described as any part of McDowell County not within the corporate limits of any municipality. In addition, the Governing Board of any municipality may by resolution permit this Ordinance to be applicable within the municipality. If it does so the municipality shall give written notice to the county of its withdrawal of such permission. Thirty (30) days after the day the county receives the notice this Ordinance ceases to be applicable within the municipality.

Section 500.3 Short Title

This ordinance shall be known as the Abandoned Mobile Home Ordinance of McDowell County, North Carolina, and may be cited as the Abandoned Mobile Home Ordinance.

Section 501. Purpose

The purpose of this article is to promote the public safety, health, and welfare of the citizens of McDowell County through the regulation of abandoned manufactured homes in the county. All abandoned property defined herein is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare, and safety of the residents of McDowell County. This article is adopted pursuant to the authority contained in N.C.G.S. 153A-121, N.C.G.S. 153A-123, and N.C.G.S. 153A-140.

Section 502. Definitions

The following words, terms, and phrases shall have the following meanings when used in this article.

Abandoned Manufactured Home: A manufactured home that has not been used as a dwelling for at least 120 days and is found to be a nuisance because it is in a wrecked, scrapped, disassembled, unusable, cannibalized, burnt, inoperable, or unrepairable state, or creates or fosters one or more of the following conditions:

1. A breeding ground or harbor for mosquitoes, other insects, rats, or other pests;
2. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height;
3. The collection of pools or ponds of water;
4. Concentrated quantities of gasoline, oil, or other flammable or explosive materials;
5. A source of danger for children because of the possibility of entrapment or injury from exposed sharp surfaces of metal, glass, or other rigid materials;
6. A source of danger from the home, or parts thereof, falling or turning over;
7. An accumulation of garbage, food waste, or any other rotten or putrefied matter of any kind;
8. Accumulation of sewage or animal waste;
9. Concentrated quantities of hazardous materials;
10. The presence of dead animals; or
11. Any manufactured home specifically declared a public health and safety hazard by the Board of Commissioners or a duly authorized county official or employee.

Manufactured homes that are abandoned as defined herein shall be considered personal property and, if previously characterized as real property for tax or other purposes, shall forfeit that characterization.

Manufactured Home: A structure, transportable in one or more sections, which in the traveling mode whose body is 8 feet or more in width or 40 feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. Such term shall include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Department of Housing and Urban Development (HUD) and complies with the standards established under that Federal agency. For purposes of this ordinance, "manufactured home" includes both factory-built single-family structures built to meet standards established under The National Manufactured Housing Construction and Safety Standards Act of 1974 and mobile homes built prior to the effective date of those standards (June 15, 1976). The Federal Standards became effective on June 15, 1976, and

all homes with a date of manufacture on or after this date were required to have a HUD label indicating compliance with the standards.

Section 503. Regulated Activities

Section 503.1 Administration

- A. The McDowell County Planning Department and McDowell County Sheriff's Department are jointly and mutually responsible for the administration and enforcement of this article.
- B. The county may remove, store, and dispose of abandoned manufactured homes in compliance with this article and applicable state laws.
- C. Nothing in this article shall be construed to limit the legal authority of powers of officers or the employees of the county or state in enforcing other laws or in otherwise carrying out their duties with regard to abandoned manufactured homes.

Section 503.2 Abandoned manufactured homes unlawful; removal authorized

- A. It shall be unlawful for the registered owner or persons entitled to the possession of an abandoned manufactured home, or for the registered owner, lessee, or occupant of the real property upon which an abandoned manufactured home is located, to cause or allow a manufactured home to be an abandoned manufactured home.
- B. A manufactured home shall be considered abandoned if it has not been connected to either water or electrical utilities for a period in excess of 120 days.
- C. If, following the notice required by Section 503.3, no action is taken to remove or abate the abandoned manufactured home pursuant to the time limitations period identified in the notice of violation or following appeal pursuant to this article, the county may enter the property and remove, abate, or remedy the abandoned manufactured home as provided herein.

Section 503.3 Notice, Hearing, Appeal, Lien on Property

- A. Upon determining that a violation of this article exists, the Planning Department shall issue a written notice of violation to (1) the registered owner or person(s) entitled to possession of the abandoned manufactured home; (2) the registered owner, lessee, or person(s) entitled to the land on which the abandoned manufactured home is located, and (3) the occupant of the abandoned manufactured home.
- B. The notice shall be provided by hand delivery, service of process, or certified mail.
- C. The notice shall (1) identify the property and describe the abandoned manufactured home located thereon to be removed, abated, or remedied; (2) direct that the

abandoned manufactured home be removed, abated, or remedied; (3) provide a reasonable time period in which to comply, not to exceed ninety (90) days; (4) state that the county may enter the property to remove, abate, or remedy the abandoned manufactured home if appropriate action is not taken during the time period provided; (5) state that the costs incurred by the county to remove, abate, or remedy the abandoned manufactured home, if not paid by the violator(s), shall be a lien upon the abandoned manufactured home the abandoned manufactured home owners real or personal property upon which it is located and shall be collectable as unpaid taxes; and (6) notify the violator(s) of a right to appeal the basis of the notice to the Planning Administrator, provided the appeal is made within fifteen (15) calendar days of receipt of the notice. (7) If the owner of the real property on which the abandoned manufactured home is located can demonstrate that the cost of removal, abatement or remediation would create an undue financial hardship, the county shall assume responsibility for removal of the manufactured home by a licensed and or bonded contractor.

- D. If the name or whereabouts of the owner, tenant, possessor, or occupant cannot after due diligence be discovered, the notice shall, in addition to the above, include the date, time, and location for a hearing before the Planning Administrator on the matter. The notice shall be considered properly and adequately served if a copy thereof is conspicuously posted on the property in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the county at least once not later than one week prior to the hearing.
- E. The owner, tenant, possessor, occupant, or agent of the owner may appeal a notice to the Planning Administrator for decision. The owner or his/her agent may either rely on written materials or appear before the Planning Administrator for a hearing at which he/she shall be heard in person or by counsel and may present arguments and evidence pertaining to the matter. The only issues for appeal are (1) whether the person is actually entitled to the notice, or (2) whether the action or condition that serves as the basis of the notice is dangerous or prejudicial to public health or safety. The fact that an owner did not bring the manufactured home to the property or does not have a possessory interest in the condition creating the abandoned manufactured home is not a defense.
- F. The Planning Administrator shall within fifteen days of the date of the hearing or the date of the written appeal if a hearing is not requested, issue an order either canceling the notice or directing the violator(s) to remove, abate, or remedy the identified manufactured home. The owner, tenant, possessor, or occupant may appeal decisions of the Planning Administrator to the McDowell County Planning Board within fifteen days of the decision. An appellant may further appeal the decision of the McDowell County Planning Board to the McDowell County Board of Commissioners.
- G. If an abandoned manufactured home is not removed, abated, or remedied during the time period provided by the initial notice, or within thirty days of a decision of the

Planning Administrator, Planning Board, or McDowell County Board of Commissioners from which an appeal has not been taken, then, pursuant to N.C.G.S. 153A-140 and subject to the provisions of Article 57 of Chapter 106 of the General Statutes, the county may enter the property and remove, abate, or remedy everything related to the abandoned manufactured home that is dangerous or prejudicial to the public health or safety. The expense of such action shall be paid by the violator(s), and shall, if not paid, be a lien upon the property or premises where the abandoned manufactured home was located and shall be collected as unpaid taxes.

- H. Any person who removes an abandoned manufactured home pursuant to this article shall not be held liable for damages for the removal of the abandoned manufactured home to the owner, lien holder, or other person legally entitled to the possession of the abandoned manufactured home removed; however, any person who intentionally or negligently inflicts injury upon any person or real property in the removal of such abandoned manufactured home, may be held liable for damages.

Section 504. Enforcement

- A. Enforcement of this article shall rest with those governmental agencies and personnel authorized to exercise police powers to include Environmental Enforcement Officers within the McDowell County Planning Department and the McDowell County Sheriff's Department.
- B. The provisions of this article shall be enforced by the inspection of property and by observation of persons who are engaged in or responsible for a violation of an action or condition that is prejudicial to public health or safety. Enforcement personnel are empowered to issue citations, warning citations, or letters of warning when any of the provisions of this article have been violated. Citations shall be delivered by enforcement officials in person to the alleged violator or delivered by registered mail return receipt requested to the person so charged. Any citation of violation so delivered or mailed shall direct the alleged violator to appear in district court on or before a specific day or hour named in the citation. The period so specified shall not be less than seventy-two (72) hours after its delivery to the violator.
- C. Where enforcement personnel determine that a violation is a first offense for the person charged, a written letter or warning citation shall be issued. Such warning letter or warning citation shall state therein the nature of the violation, the corrective measures to be taken, and the time and date when corrections are to be completed. Failure to comply with the corrective measures stated in such warning notices shall be just cause for enforcement personnel to issue a citation for violation of this article.
- D. The McDowell County Planning Department shall cause all citation forms to be serially numbered and accounted for. The McDowell County Auditor or his representative may periodically inspect these records to determine the disposition of the forms and shall report the result of such inspection to the McDowell County

Manager. For the purpose of this inspection, the McDowell County Auditor shall have access to all necessary records and files.

Section 505. Penalties

Section 505.1. Penalties

- A. Civil penalty: The County may assess a civil penalty of \$100.00 for first offense violations of this article, \$200.00 for the second offense, and \$500.00 for each subsequent offense, which amount may be recovered by the county in a civil action in the nature of a debt. Each day in which the violation occurs or continues shall constitute a separate offense. No civil penalty shall be assessed prior to notice of violation by citation or letter.
- B. Injunction and order of abatement: The provisions of this article may be enforced by injunction and order of abatement.
- C. Criminal penalties: Any person violating the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$100.00 for the first offense, \$200.00 for the second offense, and \$500.00 for each subsequent offense, or imprisonment of not more than 30 days. Each day in which the violation occurs or continues shall constitute a separate offense.

Section 505.2 Article cumulative

Procedures set forth in this article shall be in addition to any other remedies that may exist under law or ordinance for the abatement of public nuisances or for the removal of abandoned manufactured homes.

Section 506 - Administration

Section 506.1 Servability

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 506.2 Conflict with Other Laws

Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted statutes, rules, regulations or ordinances, the most restrictive or that imposing higher standards shall govern.

Section 506.3 Effective Date

This Ordinance shall take effect and be in force 9th day of April, 2007.

MCDOWELL COUNTY

Andrew K. Webb, Chairman
McDowell County Board of Commissioners

Attest:

Carrie Padgett, Clerk to the Board