

CHAPTER 34 – NUISANCES

ARTICLE I. - IN GENERAL

Sec. 34-1 - Purpose and findings.

The governing authority finds that there is a need to establish minimum standards governing the use, occupancy, condition and maintenance of property, dwellings, buildings, and structures. Left completely unregulated, the failure to properly maintain property can become a threat to public safety and a detriment to property values and to the Town's general public welfare, as well as create an aesthetic nuisance. The Town finds that there is a substantial need directly related to the public health, safety and welfare to comprehensively address these concerns through the adoption of the following regulations. The purpose and intent of the governing authority of the Town in enacting this Chapter is as follows:

- (1) To protect the health, safety and general welfare of the citizens of the Town, and to implement the policies and objectives of a comprehensive property management plan throughout the Town through the enactment of regulations governing the property maintenance in the Town;
- (2) To preserve the value of property and maintain for the Town's residents, workers and visitors a safe and aesthetically attractive environment and to advance the aesthetic interests of the Town.
- (3) To establish minimum standards governing supplied utilities and facilities and other physical things and conditions essential to make dwellings, building sand structure and surrounding premises safe, sanitary and fit for human use and habitation;
- (4) To establish minimum standards governing the use, occupancy, condition and maintenance of property, dwellings, buildings and structures.
- (5) To fix certain responsibilities and duties of owners, operators and occupants of dwellings.

Secs. 34-2—34-17. - Reserved.

ARTICLE II. - GENERAL NUISANCE ABATEMENT PROCEDURE

Sec. 34-18. - Offense; penalty.

- (1) It is declared to be an offense for any owner, agent, or tenant to maintain a nuisance. Each day a nuisance is continued shall constitute a separate offense. Following five days after receipt of certified written notice to the property owner, agent, or tenant, a citation may be issued by the Town.
- (2) Penalties for the first violation of this section shall be a minimum fine of \$100.00. The penalty for second violations of the same provisions of this section by the same owner or tenant shall be a minimum fine of \$500.00. Third or repeat violations of the same provisions of this section by the same owner or tenant shall be a minimum fine of \$1,000.00.
- (3) Unless otherwise specified, no penalty issued for a violation of this article shall be inconsistent with the provisions set forth in section 1-10.

Sec. 34-19. - Conditions harmful to health.

- (1) The following conditions being maintained or located on an owner's property may be declared to be nuisances when any one of them endangers the health, welfare, or good of other persons or the good order of the community:
 - (a) Stagnant water on the premises;
 - (b) Any dead or decaying matter, weeds, vegetation, or any fruit, vegetable, animal, or rodent, upon the premises which is odorous or capable of causing disease or annoyance to the inhabitants of the Town;
 - (c) The generation of smoke or fumes in sufficient amounts to cause odor or annoyance to the inhabitants of the Town;

- (d) The pollution of public water or the injection of matter into the sewerage system that would be damaging thereto;
- (e) Maintaining a dangerous or diseased animal or fowl;
- (f) Obstruction of a public street, highway, or sidewalk without a permit;
- (g) Loud or unusual noises which are detrimental or annoying to reasonable people including, without limitation, unusual loud disturbances in or around churches or multiple-family complexes such as loud music and other activities in swimming pool and clubhouse areas;
- (h) All walls, trees, and buildings that may endanger persons or property
- (i) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent the activities;
- (j) Unused iceboxes, refrigerators, and the like, unless the doors, latches or locks thereof are removed;
- (k) Any other condition constituting a nuisance under state law or this Code.

(2) This section shall not be construed to be the exclusive definition of nuisance within this Code.

State law reference— Nuisance defined, O.C.G.A. § 41-1-1.

Sec. 34-20. - Complaints.

- (1) Any official of the Town or otherwise authorized person may direct a complaint of nuisance to the Town police department, or the Mayor or his designee. Any complaint of nuisance shall be investigated by the police department and may be placed on the municipal court docket for a hearing upon the basis of the investigation.
- (2) The municipal court shall hold a hearing thereon after giving the party involved at least five days' notice, and, upon finding that a nuisance does exist, shall issue an order to the owner, agent in control of, or tenant in possession, stating that a nuisance has been found to exist and that the nuisance must be abated within so many hours or days as the judge shall deem reasonable, having consideration for the nature of the nuisance and its effect on the public.
- (3) County animal control officers or Town building and license inspectors may also receive complaints, investigate the same, and place on the court docket such complaints in the same manner as police officers.

State law reference— Filing of complaint to abate public nuisance, O.C.G.A. § 41-2-2; authority of municipal court to order abatement of nuisance, O.C.G.A. § 41-2-5.

Sec. 34-21. - Abatement by Town.

- (1) In any case where the owner, agent, or tenant fails to abate the nuisance in the time specified, or where the owner, agent, or tenant cannot be served with notice, or where the nature of the nuisance is such, in the opinion of the municipal court judge, that it must be immediately abated, the judge may issue an order to the Chief of Police directing the nuisance to be abated.
- (2) The Chief of Police, in such case, shall keep a record of the expenses and cost of abating same and the costs shall be billed against the owner, agent, or tenant for collection as for Town revenues generally and shall become a lien on the property of such persons.
- (3) Other Town departments shall assist the Chief of Police as is necessary in abating nuisances hereunder.

Sec. 34-22. - Summary abatement; nuisance per se and emergency conditions

Nothing contained in this chapter shall prevent the municipal court judge from summarily and without notice ordering the abatement of or abating any nuisance that is a nuisance per se in the law or where the case is an urgent one and the health and safety of the public or a portion thereof is in imminent danger.

State law reference— Similar provisions, O.C.G.A. § 41-2-5.

Secs. 34-23—34-47. - Reserved.

ARTICLE III. - DANGEROUS, UNSAFE OR UNFIT BUILDINGS OR STRUCTURES

DIVISION I - GENERALLY

State Law reference— Unsafe building ordinances, O.C.G.A. § 41-2-7 et seq

Sec. 34-48. - 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:

Applicable codes means:

- (1) Any optional housing or abatement standard provided in O.C.G.A. title 8, ch. 2 (O.C.G.A. § 8-2-1 et seq.), as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
- (2) Any fire or life safety code as provided for in O.C.G.A. title 25, ch. 2 (O.C.G.A. § 25-2-1 et seq.); and
- (3) Any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. title 8, ch. 2 (O.C.G.A. § 8-2-1 et seq.), after October 1 provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law; and
- (4) The International Property Management Code, International Codes and the Uniform land Development Code.

Closing means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

Drug crime means an act which is a violation of the Controlled Substances Act (O.C.G.A. § 16-13- 20 et seq.).

Dwellings, buildings, or structures means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term "dwellings, buildings, or structures" shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

Interested parties means:

- (1) Owner;
- (2) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;
- (3) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;
- (4) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of the court. The term "interested parties" shall not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded which interest shall remain unaffected; and
- (5) Persons in possession of said property and premises.

Owner means the holder of the title in fee simple and every mortgagee of record.

Public authority means any member of the Council, or any officer who is in charge of any department or branch of the government of the Town relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the Town.

Public officer means the officer or officers who are authorized by O.C.G.A. §§ 41-2-7, 41-2-8, and 41-2-9 through 41-2-17 and by this article to exercise the powers prescribed by this article or any agent of such officer or officers.

Repair means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building, or structure.

Resident means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

State law reference— Similar provisions, O.C.G.A. § 31-2-8.

Sec. 34-49. - Findings.

- (1) The governing authority of the Town finds and declares that, within the Town limits, there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the Town; or general nuisance law in which constitutes a hazard to the health, safety, and welfare of the people of the Town and the state; and that public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.
- (2) It is further found and declared that in the Town, where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the Town and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. The governing authority of the Town finds that there exist in the Town dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or other conditions exist rendering such dwellings, buildings or structure unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the Town, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting and endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.
- (3) It is the intention of the governing authority that this article shall comply with and does comply with O.C.G.A § 41-2-9(b) as a finding that conditions as set out in O.C.G.A. § 41-2-7 exist within the Town.

Sec. 34-50. - Continued use of other laws and ordinances.

It is the intent of the Council that nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the Town to enforce any provisions of any local enabling act, charter, or ordinance or regulation, nor to prevent or punish violations thereof, and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

Sec. 34-51. - Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthy.

- (1) It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the Town, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances.
- (2) The Mayor shall appoint or designate the Town code enforcement officer, Chief of Police, building inspector, and their designees as public officers to exercise the powers prescribed by this article.
- (3) Whenever a request is filed with the public officer by a public authority or by at least three residents of the Town charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the

commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and interested parties in such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner and the interested parties; state with particularity the factual basis for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance. The summons shall notify the owner and interested parties that a hearing will be held before the municipal court at a date and time certain and at a place within the Town where the property is located. Such hearing shall be held not less than 15 days or more than 45 days after the filing of said complaint in court. The owner and interested parties shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing.

- (4) If, after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any interested parties that have answered the complaint or appeared at the hearing, an order:
 - (a) If the repair, alteration, or improvement of said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes;
 - (b) If the repair, alteration, or improvement of said dwelling, building, or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property;
- (5) For purposes of this article, the court shall make its determination of reasonable cost in relation to the present value of the dwelling, building or structure without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be a factor in the court's determination. The present value of the structure and the costs of repair, alteration, or improvement may be established by affidavits of real estate appraisers with a state appraiser classification as provided in O.C.G.A. title 43, ch. 39A (O.C.G.A. § 43-39A-1 et seq.), qualified building contractors, or qualified building inspectors without actual testimony presented; or
- (6) Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the jurisdiction.
 - (a) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure to be repaired, altered, improved, to be vacated and closed, or demolished. The public officer shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

"This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."
 - (b) If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure,

and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer and the Town are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.

- (c) The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the tax commissioner, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.
- (d) The lien provided for in subsection (g) of this section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure or demolition in the office of the clerk of superior court in the county and shall relate back to the date of this filing of the lis pendens notice required under O.C.G.A. § 41-2-12(c). The clerk of superior court shall record and index such certified copy of the order in the deed records of the county and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid. After filing a certified copy of the order with the clerk of superior court, the public officer shall forward a copy of the order and a final statement of costs to the county tax commissioner. It shall be the duty of the county tax commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. title 48, ch. 4 (O.C.G.A. § 48-4-1 et seq.); provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The county tax commissioner shall collect and enforce municipal liens imposed pursuant to this chapter in accordance with O.C.G.A. § 48-5-359.1. The tax commissioner shall remit the amount collected to the governing authority of the Town.
- (e) The tax commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. § 41-2-7 et seq. unless such costs are waived by resolution of the county. Any such amount collected and retained for administration shall be deposited in the general fund of the county to pay the cost of administering the lien.
- (f) The Town may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the Town agreeing to a timetable for rehabilitation of the real property of the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.
- (g) Where the abatement action does not commence in the superior court, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.
- (h) The public officers designated herein may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this article
- (i) Nothing in this article shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

State law reference— Similar provisions, O.C.G.A. § 41-2-9.

Sec. 34-52. - Determination under existing ordinances.

- (1) The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure, or the occupants of a neighborhood dwelling, building, or structure, or of other residents of the Town. Such conditions include, without limiting the generality of the foregoing, the following:
 - (a) Defects therein increasing the hazards of fire, accidents or other calamities;

- (b) Lack of adequate ventilation, light, or sanitary facilities;
 - (c) Dilapidation;
 - (d) Disrepair;
 - (e) Structural defects;
 - (f) Uncleanliness; and
 - (g) Other additional standards, which may from time to time be adopted and referenced herein by ordinance amendment.
- (2) The public officer may determine, under existing ordinances, that a dwelling, building or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

State law reference— Similar provisions, O.C.G.A. § 41-2-10.

Sec. 34-53. - Powers of public officers.

The public officers designated in this article shall have the following powers:

- (1) To investigate the dwelling conditions in the Town in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officer, agents, and employees as he deems necessary to carry out the purposes of this article; and
- (5) To delegate any of his functions and powers under this article to such officers and agents as he may designate.

State law reference— Similar provisions, O.C.G.A. § 41-2-9.

Sec. 34-54. - Service of complaints and other filings.

- (1) Complaints issued by a public officer pursuant to this article shall be served in the following manner:
 - (a) At least 14 days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable
 - (b) Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.
 - (c) For interested parties whose mailing address is unknown, a notice stating the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in the county once a week for two consecutive weeks prior to the hearing.
- (2) Notice of lis pendens shall be filed in the office of the clerk of superior court of the county at the time of filing the complaint in the appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- (3) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this section on any interested party who answers the complaint or appears at the hearing. Any

interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

State law reference— Similar provisions, O.C.G.A. § 41-2-12.

Sec. 34-55 through 34.65 – RESERVED

DIVISION II – HOUSES OR STRUCTURES USED IN THE MANUFACTURE OF CONTROLLED SUBSTANCES

Sec 34-66. – Definitions

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

Controlled substance means any drug substances or immediate precursor to the substances described in schedule I through V, O.C.G.A. §§ 16-13-25 – 16-13-29 and schedules 1 through 5 of 21 CFR 1308.

Manufacture means the production, preparation, propagation, compounding conversing or processing of any controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis.

Owner means any person, firm, corporation, partnership, or other entity that is the record owner, as shown by the deed records in the office of the clerk of Superior Court of Chattooga County, Georgia of the property upon which is located the house and/or structure within which a controlled substance was manufactured.

Utilities means services furnished by the Town to the public, including but not limited to water, gas, or sewage disposal. (Ord. of 6-24-2004(1), § 1)

Sec. 34-67 – Disconnection of utilities to houses and or structures used for the manufacture of any controlled substance

- (1) Upon the determination by the Chief of Police or his designee that any house and/or structure situated in the Town that is provided utilities by the Town and is currently, or since the adoption of this article, has been used for the manufacturing of any controlled substance, the utilities provided therein by the Town shall immediately be disconnected by the Town;
- (2) If, however, the Chief of Police or his designee concludes that a structure used for the manufacture of a controlled substance contains multiple dwelling units separated by walls with no interior access to adjoining unites, and whose individual dwelling units are not provided with a separate utility shut-off valves by the Town, the owner shall cause the dwelling unit wherein the controlled substance was manufactured to be vacated and posted with a warning that the unit was used for the manufacture of a controlled substance. The owner of the structure containing the unit shall not allow the unit to be occupied until the owner satisfies the requirements of sections 34-21 and 34-22. An owner who allows a unit to be occupied in violation of this subsection shall be subject to a maximum fine of \$500.00 for each day the unit is occupied. (ord. of 6-24-2004(1) § 2)

Sec. 34.68 – Requirements for the reconnection of utilities

- (1) No house and/or structure in which the utilities have been disconnected or the dwelling unit has been vacated pursuant to this article shall be furnished with utilities from the Town or allowed to be occupied unless and until the owner of said house and/or structure first obtains certification from an entity authorized in the handling and disposal of hazardous materials, whereby the house and/or structure and the contents therein have been determined to contain no hazardous materials as a result of said house and/or structure used for the manufacture of any controlled substance.
- (2) Any house and/or structure in which the utilities have been disconnected or vacated pursuant to this article shall be considered an unsafe building as defined in state law.

Sec. 34-69 – Removal of materials

It shall be the sole responsibility of the owner of the house and/or structure in which the utilities have been disconnected, or the dwelling unit that has been vacated pursuant to this article, to ensure the proper disposal of any and all hazardous materials found within said house and/or structure. No such material will be removed or in any way handled by any employee

of the Town; provided, however, nothing in this section shall be construed to limit in any way the removal of hazardous materials by law enforcement personnel authorized to do so and in the performance of their lawful duties. (Ord. of 6-24-2004(1) § 4)

Sec. 34-70 – Process for enforcement; disputing utilities disconnection; appeal and emergency hearings

(1) Process for enforcement

- (a) Upon finding by the Chief of Police or his designee that any house and/or structure situated within the Town that is provided utilities by the Town and is currently or has in the past been used for the manufacture of any controlled substance, written notice shall be issued by the Chief of Police, or his designee, to the utilities account holder as designated on records maintained by the Town and owner of record of the subject property as shown on records of the clerk of Superior Court of Chattooga County;
- (b) In addition to any requirements otherwise provided herein, all notices issued pursuant to this section and article shall plainly and clearly state to the utilities account holder and owner of record of the subject property the location, date and time at which post-termination of utilities hearing will be held, and during which the utilities account holder and record owner will be afforded the opportunity to contest the disconnection of utilities and/or the notice to vacate. Any notice provided hereunder should be served, at the discretion of the Chief of Police or his designee, either personally or via certified mail to the last known mailing address of the utilities account holder and record owner. A copy of said notice shall also be visibly posted on the subject property.

(2) Disputing utilities disconnection

- (a) Unless otherwise provided herein, the post-termination hearing provided herein will be conducted by the municipal judge of the Town of Trion at a regular session of said court at the location, date and time as provided in the notice to the utilities account holder and record owner. All efforts should be made so that the post-termination hearing provided herein occurs at the municipal court's first session immediately following the issuance of the notice given hereunder. Hearings not occurring at the municipal court's first session immediately following the issuance of the notice given hereunder shall be held at the municipal court's next regular session.
- (b) The post-termination hearing provided herein shall be limited to the following issues:
 - (i) In cases involving multiple dwelling units, to determine if the dwelling unit wherein a controlled substance was manufactured should be vacated;
 - (ii) To determine if the utilities disconnection was warranted under the circumstances by a preponderance of the evidence; and
 - (iii) To provide the utilities account holder and record owner of the subject property with the opportunity to dispute the finding of the Chief of Police, or his designee, that the subject property has been used for the manufacture of any controlled substance.
- (c) The following rules shall govern the post-termination hearing provided herein:
 - (i) Any and all evidence relevant to said issues, whether presented by the Chief of Police, or his designee, or by the utilities account holder or record owner or any tenant of the record owner without regard to the municipality of the same, shall be entered into evidence and should be considered by the Court.
 - (ii) Failure of the utilities account holder or record owner or any tenant of the record owner to attend any hearing provided hereby, regardless of the reason for such absence, shall indicate that the utilities account holder or record owner or any tenant of the record owner does not dispute the findings of the Chief of Police or his designee, and for purposes of said hearing, all allegations shall be deemed admitted by the utilities account holder or record owner or any tenant of the record owner not in attendance. Said failure to attend shall also indicate, and the court shall consider it as such, that the utilities account holder or record owner or any tenant of the record owner not attending has waived any participation thereby in said post-termination hearing.
 - (iii) Upon the determination at said hearing that the utilities disconnection or requirement to vacate was warranted under the circumstances except as otherwise provided under subsection (c) or (d) of this

section, utilities for the property in issue shall remain disconnected or the dwelling unit shall remain vacant until and unless the requirements of section 34-21 have been satisfied.

(3) Appeals

- (a) All appeals made under this section shall be for the sole purpose of determining the propriety of the municipal court's determination that the utilities disconnection and/or requirement to vacate were warranted under the circumstances.
- (b) Unless otherwise provided by law, appeals made hereunder shall be made to the Superior Court of Chattooga County, Georgia, and shall be by writ of certiorari only and in accordance with O.C.G.A. § 5-4-1 et seq. and otherwise in accordance with the procedures outlined by this article, as well as by the Town's ordinances and Charter concerning appeals of municipal court decision as to the municipal code violations.

(4) Emergency hearings

- (a) In the event that utilities are disconnected under this article or the record owner is required to vacate the premises, in whole or in part, the utilities account holder and/or record owner may petition for an emergency hearing regarding said termination as follows, to wit:
- (b) Within 24 hours of termination of utilities or requirement to vacate the premises, or part thereof, as provided under this article, the utilities account holder and/or record owner or tenant of the record owner may either orally or in writing request an emergency hearing regarding said utilities termination or requirement to vacate to the Town clerk or his/her designee. Upon receiving a request for an emergency hearing as outlined herein, the Town clerk shall notify the Mayor.
- (c) At the discretion of the Mayor and upon consideration of the circumstances presented, the Mayor may either grant or deny an emergency hearing. If an emergency hearing is denied, the post-termination hearing will occur as otherwise provided in the notice to the utilities account holder or record owner or any tenant of the record owner.
- (d) If an emergency hearing is granted, same shall be heard by the Mayor or his/her designee or otherwise made in accordance with the procedures set forth in subsection (b) herein, within 72 hours of the grant of the petition for the emergency hearing.
- (e) The appeals from any emergency hearing as provided herein shall be made as provided in subsection (c) of this section.

(Ord. of 6-24-2002(1) § 5)

ARTICLE IV. – JUNKYARDS AND MOTOR VEHICLES

Sec. 34-71 – Definitions.

- (a) The following words, terms and phrases, when used in this Chapter shall have the meaning ascribed to them as set forth herein, except where the context clearly indicates a different meaning:
 - (1) *Accessory structure* means a structure detached from the principal building located on the same lot and customarily incidental and subordinate in area, extent, and purpose of the principal building or use. "Accessory structure" includes, but is not limited to, any portable, demanable or permanent enclosure, shade structure and carport or garage.
 - (2) *Automobile graveyard* means any location which is maintained or used for storing, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
 - (3) *Building* means any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any animal, equipment, goods or material of any kind.

- (4) *Dwelling* means any structure which is wholly or partially used or intended to be used for living or sleeping by human occupants, whether or not such structure is occupied or vacant.
- (5) *Inoperable vehicle* means: (a) a vehicle which is incapable of operation or use upon a highway; (b) a vehicle that has no resale value except as a source of parts or scrap; or, (c) any wrecked non-operable automobile, truck or other vehicle.
- (6) *Junk* means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, wood, lumber, debris, waste, junked, immobile, dismantled or wrecked vehicles or parts thereof, or iron, steel, or other old scrap ferrous or nonferrous material.
- (7) *Junkyard* means any location which is maintained or used for storing, buying or selling junk as defined above, or for an automobile graveyard as defined above, and the term shall include, but not be limited to, garbage dumps, sanitary fills, and scrap processor establishments.
- (8) *Major overhaul* means the repair, alteration or restoration of a motor vehicle which involves the removal of the paint or major parts of or the disassembly of major parts of a motor vehicle including without limitation the following major parts: engine, body, interior seats, interior equipment necessary for the operation of the vehicle and/or drive train.
- (9) *Operator* means any person who is in charge, care or control of a building, or part thereof, in which dwelling units are let.
- (10) *Owner* means any person, firm, corporation or entity who alone or jointly or severally with others; (a) has legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or (b) has charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, prime tenant, or is executor, administrator, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this section to the same extent as the owner.
- (11) *Premises* means a lot, plot or parcel of land including dwellings, buildings or structures thereon.
- (12) *Scrap processor* means any person engaged only in the business of buying iron and metal, including, but not limited to, old automobiles for the specific purpose of processing into raw material for re-melting purposes only, whose principal product is ferrous and nonferrous scrap for shipment to steel mills, foundries, smelters, and refineries, and who maintains an established place of business in this state and has facilities and machinery designed for such processing.

Sec. 34-72 – Junkyards.

- (a) *Limitations on location of junkyards.* It shall be unlawful for any person to establish, operate, or maintain any junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any highway, street, avenue, or alley, located in the Town of Trion.
- (b) *Authority to promulgate regulations governing junkyards.* The Mayor may promulgate uniform and reasonable regulations governing the screening or fencing of junkyards, including the material used in such screening or fencing, and the location, construction, and maintenance thereof.
- (c) *Notice of violations.* Whenever the Town of Trion discovers any violation of the aforesaid conditions to exist, the Mayor shall prepare a formal notice to the owner or occupant, and said notice shall be delivered to the owner or occupant by an officer of the Town's police department. If said notice cannot be served upon the owner or occupant, then said notice shall be conspicuously posted on the premises.
- (d) *Contents of notice of violation.* Said notice shall advise the tenant or occupant of the violation or suspected violation of this article, and shall give notice to the tenant or occupant of not less than five or longer than 30 days either to remove all of said materials and waste from the premises, or to screen or fence the premises as prescribed in this

section. On such an occupant or tenant's failure to comply with said notice, a charge of violation of this chapter shall be prosecuted by the Town, as for any other unlawful act.

- (e) *Unlawful junkyard declared nuisance; authority to remove.* Any junkyard, the establishment, operation, or maintenance of which is made unlawful by this section, and which is not screened and/or fenced after proper notice of such violation, is declared to be a public and/or private nuisance and may be forthwith removed, obliterated, or abated. Fees for removal or abatement of the property in violation of this section may be charged as set and determined by the Town following such abatement or removal. The Town of Trion may then submit by registered mail a statement of the expenses of such removal or abatement to the person owning or operating such junkyard, and if payment is not made within 30 days of receipt thereof, may certify the same for collection by judgment and fieri facias.

Sec. 34-73 – Unregistered and unlicensed motor vehicles.

No person shall park or permit any other person to park any motor vehicle, except a motor vehicle parked in an enclosed building, on any premises in a residential district, if the vehicle:

- (1) Is unregistered;
- (2) Has expired registration; or,
- (3) Does not have a lawful license plate or lawful temporary tag, which plate or tag is currently registered to that vehicle displayed thereon.

Sec. 34-74 – Inoperable vehicles.

No owner or occupant of any premises shall park any inoperable vehicle or permit any other person to park any inoperable vehicle on the owner's or occupant's premises for more than seventy-two (72) hours, unless the inoperable vehicle is parked in an enclosed structure. No person shall park any inoperable vehicle upon any public street, alley, or other public property. A court of competent jurisdiction shall have the authority, upon conviction of a violation of this subsection, to order the owner and/or occupant of the premises to replace the ground cover beneath the inoperable vehicle, if appropriate.

Sec. 34-75 – Major overhaul.

- (1) No person shall perform a major overhaul of any vehicle or permit any other person to perform a major overhaul of any vehicle on premises in a residential zone unless:
 - (a) The person performing the overhaul is the occupant of the premises;
 - (b) The person performing the overhaul is the owner of the vehicle; and,
 - (c) The work is done inside a garage or enclosed structure; however, the major overhaul of such a vehicle on premises in a residential zone must be completed within three (3) days if such overhaul takes place outside of a garage or enclosed structure.
- (2) No person shall perform a major overhaul of any vehicle or permit any other person to perform a major overhaul of any vehicle on any premises in a business, commercial or industrial district, unless the overhaul is performed at an approved automobile sales or repair establishment.

Sec. 34-76 – Storage of vehicles used for recreational purposes.

No person shall park or permit any other person to park any unlicensed, unregistered, inoperable or junk vehicles which are used for recreation purposes including, but not limited to, boats, snowmobiles, travel trailers, cargo trailers, campers, all-terrain vehicles and motor homes, on premises in a residential district unless they are stored within an enclosed building.

Sec. 34-77 – Storage of machinery, implements and equipment.

No person shall park or permit any other person to park any machinery, implements or equipment designed for use in agriculture, construction or other commercial enterprise, unless the machinery, implement or equipment is parked in an enclosed garage. This requirement does not apply to single parcels zoned for commercial or industrial purposes or to single agricultural parcels greater than five (5) acres. This requirement does not apply to such machinery, implements or equipment that is being used in construction of structures or dwellings so long as such machinery, implements or equipment is removed after fifteen (15) days of the end of construction, but not later than eighteen (18) months after the construction was begun.

Sec 34-78 – Parking in front yard of dwelling prohibited.

No person shall park or permit any other person to park any vehicle in the front yard of any residential dwelling, except for permitted driveways. A 24-hour notice shall be posted on any vehicle prior to citation being issued for violation of this section.

Sec. 34-79 – Removal of vehicle by Town.

The Town shall be authorized to remove or have removed any vehicle left any place within the Town which reasonably appears to be in violation of this Chapter, lost, stolen, or unclaimed. Any removal and impoundment fee will be assessed against the owner of the vehicle or the owner of the property, and any unpaid assessment of fees shall constitute a lien which may be executed in accordance with the State law.

Secs. 34- 80 – 34-95. Reserved.