

## **Title 8**

### **HEALTH AND SAFETY**

#### **Chapters:**

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- 8.08 Nuisances**
- 8.10 Land Use Nuisances**
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## Chapter 8.04

### SOLID WASTE\*

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- 8.04.040 Garbage supervisor.
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\*For statutory provisions on municipal garbage collection and disposal systems, see RCW 35.21.120 et seq.

#### **8.04.010 Application.**

This chapter shall apply to all territory embraced within the corporate limits of the town. (Ord. 80-1 § 1, 1980).

#### **8.04.020 Intent of chapter.**

The maintenance and health and sanitation require, and it is the intention of this chapter to make, the collection, removal and disposal of garbage and refuse within the town compulsory and universal. (Ord. 80-1 § 2, 1980).

#### **8.04.030 Definitions.**

The following definitions apply in this chapter:

A. “Contractor” means any person, firm, partnership, association, institution or corporation who has contracted with or been issued a license by the town for the collection, handling and transportation of solid waste, which includes garbage, refuse,

recyclables, and yard and garden waste within the town.

B. “Garbage” means and includes all accumulations of waste matters discarded as of no further value to the owner, and which are not recyclable, including but not limited to vegetable waste, wrappings and small discarded containers, but shall exclude yard and garden waste, recyclables, sewage, dead animals, cleanings from public and private catchbasins, washracks, stumps, and hazardous and special waste as defined by Washington State Department of Ecology.

C. “Garbage can” means a watertight, impervious, raised bottom container not exceeding four cubic feet or 32 gallons in capacity, weighing not over 12 pounds when empty, fitted with two sturdy handles, one on each side, and a tight cover equipped with a handle. Where the term “garbage can” is used in this chapter it shall also include 90-gallon, 60-gallon, and 20-gallon totes and other containers furnished by the contractor.

D. “Garbage units” means secure and tight bundles, none of which shall exceed three feet in the longest dimension, and shall not exceed 65 pounds in weight.

Such “garbage units” may be packed in small boxes, barrels or bags, or in securely tight cartons or other receptacles reasonably easy to be handled and loaded by one person onto a collection vehicle.

E. “Mixed waste paper” means magazines, letter paper, envelopes without any plastic, cereal boxes, paper bags and other small boxes but does not include any plastic-coated papers, envelopes with plastic windows or any other papers and items made from fiberboard which have coatings other than printing.

F. “Person” means every person, firm, partnership, association, institution, or corporation in the town accumulating garbage, refuse, yard and garden waste, or recyclables requiring disposal. The term also means the occupant and/or the owner of the premises for which service mentioned in this chapter is rendered.

G. “Recyclables” includes but is not limited to newspapers, aluminum and tin-plated steel food and beverage containers, glass food and beverage containers and mixed waste paper.

H. “Refuse” means and includes nonrecyclable waste matter discarded as of no further value, including ashes, cinders, clinkers, broken-up household furnishings and equipment, discarded hot water tanks, barrels, cartons, and pieces of wooden crates and boxes, but shall exclude yard and garden waste, large trees, earth, sand, gravel,

rock, broken concrete, plaster, bricks and other building materials, automobile bodies, large auto parts, building waste and fire refuse and waste.

I. "Yard and garden waste" means grass clippings, leaves, branches (not to exceed three inches in diameter), brush, bushes, weeds, sod and dirt and trees not to exceed three inches in diameter and/or three feet in length, but does not include rocks, bricks, hazardous materials, scrap metals, garbage or refuse. (Ord. 90-32 § 1, 1990; Ord. 80-1 § 3, 1980).

#### **8.04.040 Garbage supervisor.**

There is created the office of town garbage supervisor who shall have supervision, under the direction of the town council, over the collection of garbage within the town and shall have supervision of and control of town sanitary fills or such other means of garbage disposal as may be established by the town. (Ord. 80-1 § 4, 1980).

#### **8.04.050 Sanitary department.**

For the purpose of carrying into effect the provisions of this chapter, there is created and established a department to be known as the town sanitary department. (Ord. 80-1 § 5, 1980).

#### **8.04.060 Garbage fund.**

There is established a "garbage fund" of the town. All moneys received by the town for the collection and disposal of garbage shall be placed in such fund, and the expense of such garbage collection and disposal shall be paid therefrom. The town may act as collection agent for any firms, persons or corporations contracting with the town to collect, haul or dispose of refuse. The town council may also provide for additional revenues to be paid into such fund from time to time. (Ord. 80-1 § 6, 1980).

#### **8.04.070 Accumulation of refuse – Container regulations and requirements.**

A. It shall be the duty of every person in possession, charge or control of any dwelling, flat, rooming house, apartment house, hospital, school, hotel, club, restaurant, boardinghouse or eating place, or in possession, charge or control of any place of business or manufacturing establishment where garbage, refuse or swill is created or accumulated at all times to keep or cause to be kept portable appurtenances, metal or other approved cans for the deposit therein of garbage and reuse, and to deposit or cause to be deposited the same therein. The town's sanitary department shall establish reg-

ulations governing the size of the containers or cans.

1. It shall be the duty of the owner of any dwelling, flat, apartment house or trailer camp to furnish or to see that his tenants are supplied with such cans.

2. Such cans shall be constructed in such a manner as to be strong, watertight, not easily corrodible, rodent-proof, insect-proof, of not less than 15 and not more than 30 gallons capacity and shall have two handles at the sides thereof and tight-fitting lids. Such lids shall not be removed except when necessary to place garbage and refuse in such cans or take the same therefrom. When garbage and refuse is placed therein or taken therefrom, such lid shall be replaced by the person placing the same therein or taking the same therefrom. Such cans shall be kept in a sanitary condition with the outside thereof clean and free from accumulative grease and decomposing material. Each can shall be kept in a place accessible to the collector.

3. Each garbage can shall be kept clean inside and out, so that no odor nuisance exists. The garbage collector shall place tags on garbage cans found to be in violation of this section, and notify the garbage supervisor. The tag shall have a perforated stub with identification number and place for location and description. Two or more violations of this provision by a person shall subject the person to penalties described in EMC 8.04.160.

B. This section is subject to the proviso that in the case of isolated dwellings or places of business located in sparsely settled portions of the town, or where reasonable access cannot be had by truck, garbage and refuse therefrom, may, upon special permit of the town council, be collected, removed and disposed of in such a manner as may be approved by the town council. Garbage and swill shall not be disposed of upon private premises by incineration.

C. Large suitable containers for both collection of garbage and refuse shall, with the approval of the town sanitary department, be used by hotels, restaurants, boardinghouses, eating places, apartment houses, schools and hospitals and in the business district.

D. Wastepaper or office supplies may be deposited in waste baskets and other suitable receptacles approved by the sanitary department.

E. It shall be the duty of every person to cause such garbage and refuse to be removed and disposed of only by the town sanitary department.

F. It shall be the duty of every person in possession, charge or control of any dead animal or upon

whose premises the same may be located, to forthwith cause the same to be removed and disposed of by the town sanitary department. (Ord. 80-1 § 7, 1980).

**8.04.080 Outdoor dumping and burning.**

It is unlawful for any person to bury, burn, dump, collect, remove or in any manner dispose of garbage or swill upon any street, alley, public or private property within the town otherwise than as provided in this chapter.

Wastepaper, boxes, rubbish and debris, brush, grass, leaves, weeds and cuttings from trees, lawns, shrubs and gardens may be burned on private property in furnaces; or, upon special permit from the fire chief or fire marshal, they may be burned in outside fireplaces, private incinerators or in open fires.

It is unlawful for any person to bury, burn or dump wastepaper, boxes, rubbish and debris, brush, grass, leaves, weeds and cuttings from trees, lawns, shrubs and gardens upon any street, alley or public place. (Ord. 80-1 § 8, 1980).

**8.04.090 Collection, removal and disposal of garbage and refuse.**

All garbage and refuse shall be collected, removed and disposed of at least once a week. (Ord. 80-1 § 9, 1980).

**8.04.100 Separation of garbage.**

The town reserves the right to and may have option to require the separation of paper or swill or other component parts of garbage and may require the deposit thereof in separate cans or receptacles and may prescribe the methods of disposal thereof. (Ord. 80-1 § 10, 1980).

**8.04.110 Use, selling and disposal of swill.**

Until otherwise provided, swill may, with the approval of the town sanitary department, and subject to its rules and regulations, be used or sold by the persons producing the same and removed beyond the town limits by the person using or purchasing the same. (Ord. 80-1 § 11, 1980).

**8.04.120 Preparation of swill for disposal by public eating place.**

It is unlawful for any person, firm or corporation conducting any hotel, restaurant or any other public eating place to deposit, throw or place swill or other refuse food matter in a lane, alley, street or other public place, or to deposit, throw or place any swill on any private property, regardless of owner-

ship, unless the swill is enclosed in vessels or tanks of approved type of the town sanitary department, which vessels shall be perfectly watertight and shall have tightly fitting covers, which covers are not to be removed except when absolutely necessary for the depositing or removal of swill. Such vessels or tanks shall be kept in the rear of the premises or in the basement or other place authorized by the town sanitary department so as to be readily accessible for collection, and shall not be kept upon the street, alley, sidewalk or other public places. All such tanks or vessels shall be promptly delivered to the collector when called for and shall be returned by him without unnecessary delay, and no person, except for purposes of collection under license, shall in any manner interfere with the vessels or tanks or with the contents thereof. (Ord. 80-1 § 12, 1980).

**8.04.130 Charges for refuse collection and disposal.**

The charges for refuse collection and disposal shall be compulsory. The monthly refuse collection charges shall be payable in advance on the first day of each month, at the clerk/treasurer's office by the owner and/or tenant. Any additional charges for extra refuse cans may be paid for at the office of the town clerk in advance of the month that the cans will be used. Those businesses which do not generate garbage, refuse or swill may apply to the town clerk for exemption from mandatory weekly pickup and monthly charge. (Ord. 80-1 § 13, 1980).

**8.04.140 Rates set by council resolution.**

All rates for refuse collection shall be set by resolution of the council of the town. The town council has authority to set lower rates for all citizens 65 years of age or older, who would qualify for a senior citizen real property tax exemption pursuant to the financial standards effective in Pierce County. Said citizens shall file an affidavit with the town clerk in a form substantially similar to the form required for the real property tax exemption. (Ord. 80-1 § 14, 1980).

**8.04.150 Promulgation of rules, rates and duties of sanitary department.**

The town shall have the power from time to time to set forth and determine rules, regulations, rates and changes in rates and the duties and responsibilities of the town sanitary department as may be necessary in the discretion of the town council for

the proper execution of this chapter. (Ord. 80-1 § 15, 1980).

**8.04.160 Violation – Penalty.**

Any person violating any of the provisions of this chapter is guilty of a misdemeanor and under conviction thereof shall be punished as provided in EMC 1.12.010. (Ord. 80-1 § 16, 1980).

**8.04.170 Recyclable materials – Separation required.**

A. The following solid waste materials are declared to be recyclable, and all persons required to have solid waste services within the town shall separate those materials and deposit them in separate designated containers provided by the town:

1. Old newspapers;
2. Aluminum and tin-plated steel food and beverage containers;
3. Glass food and beverage containers.

Other recyclable materials, such as plastics or waste oil, may be collected on a continuing basis, at the option of the town when reasonable costs for including specified additional materials are allocated to residents receiving the added service;

4. Mixed waste paper.

B. Collection shall be biweekly.

C. Yard waste is intended to be phased in at a future time through self-hauling to a collection center located in town from March through November.

D. Multifamily dwellings and commercial establishments are recognized to present unique circumstances which may initially preclude the selection of a single, uniform approach to the collection of recyclables. In recognition of such circumstances the town will work with representatives to establish the number of each type of container to handle larger volumes of recyclables which may be generated and the unbalanced volume of recyclables which may be generated; i.e., more glass containers than newspapers due to the type of business. (Ord. 90-32 § 2, 1990).

**8.04.180 Recyclable materials – Separation of nonrecyclables.**

A. Residents shall not discard yard waste together with trash and shall make it available for recovery and composting as soon as yard waste collection and composting services are provided, or shall otherwise dispose of such wastes, through composting or otherwise, on their own property.

B. Residents shall not discard recyclable material together with garbage or refuse and shall deposit said material in separate containers provided by the town. Residents or businesses shall be responsible for the cost of the replacement containers for containers lost, damaged or destroyed by residents or businesses.

C. Recyclable containers provided by the town shall not be used for other uses or purposes.

D. Mixed waste paper shall be placed in paper bags and shall be set on top of the recyclable container. (Ord. 90-32 § 3, 1990).

## Chapter 8.08

### NUISANCES

#### Sections:

- 8.08.010 Nuisances generally defined.
- 8.08.020 Nuisances specifically defined.
- 8.08.030 Person defined.
- 8.08.040 Abatement.
- 8.08.050 Liability for costs of abatement.
- 8.08.060 Buildings to be secured.
- 8.08.070 Suspension by license or permit.
- 8.08.080 Violation – Penalty.

#### **8.08.010 Nuisances generally defined.**

A nuisance consists of doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- A. Annoys, injures or endangers the comfort, repose, health or safety of others;
- B. Offends decency;
- C. Is offensive to the senses;
- D. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any stream, public park, parkway, square, sidewalk, street or highway in the town;
- E. In any way renders other persons insecure in life or the use of property; or
- F. Obstructs the free use of property so as to essentially interfere with the comfortable enjoyment of life and property. (Ord. 84-12 § 1, 1984).

#### **8.08.020 Nuisances specifically defined.**

The following specific acts, omissions, places, conditions and things are declared to be nuisances:

The erecting, maintaining, using, placing, causing, depositing, allowing, leaving or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, avenue, alley, park, parkway, or other public or private place in the town, of any one or more of the following places, conditions, things, or acts to the prejudice, danger or annoyance of others:

- A. Privies, vaults, cesspools, sumps, pits, or like places which are not securely protected from flies or rats, or which are foul or malodorous;
- B. Filthy, littered, or trash-covered premises and areas adjacent thereto;
- C. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire, metal articles, bric-a-brac, broken stone or cement; broken crockery, broken glass, broken plaster, and all other trash or abandoned material, unless the same is kept in cov-

ered bins or metal receptacles approved by the building inspector;

D. Trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding excelsior, packing hay, straw, or other packing material, lumber not neatly piled, scrap iron, tin, and other metal not neatly piled, or anything whatsoever in which flies may breed or multiply or which provides harborage for rats or which may be a fire danger;

E. All places not properly fenced which are used or maintained as junkyards or dumping grounds, or for the wrecking, disassembling, repair, or rebuilding of automobiles, trucks, tractors, or machinery of any kind or of any of the trucks, tractors, or for the storing or leaving of any machinery parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others;

F. Any putrid, unsound or unwholesome bones, meat, hides, skins, or the whole or any part of any dead animals, fish or fowl, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta or other offensive substance, provided, nothing herein contained shall prevent the temporary retention of waste in receptacles in the manner approved by the building inspector of the town;

G. The erection, continuance or use of any building, room or other place in the town for the exercise of any trade, employment or manufacture which, by occasioning noxious exhalations, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public;

H. The playing or causing to be played in front of any building where any show, moving picture exhibition or theatrical performance is given, or in the open vestibule or area of any building, of any automatic or mechanical musical instrument for the attraction of customers;

I. Making, causing or permitting to be made by means of any whistle, rattle, bell, gong, clapper, hammer, drum, sound tract, loudspeaker or other sound-amplifying device, or horn or other mechanical device, or by outcry, loud speaking, singing or by any other means any discordant and unnecessary noise of any kind which annoys any considerable number of persons lawfully in the immediate area;

J. Burning or disposal of refuse, sawdust or other material in such a manner to cause or permit ashes, sawdust, soot or cinders to be cast upon the streets or alleys of the town, or to cause or permit the smoke, ashes, soot or gases arising from such burning to become annoying to any considerable number of persons or to injure or endanger the health, comfort, or repose of said persons; provided, this section shall not apply where the party responsible for the action has properly obtained a fire permit from the fire department;

K. Any unguarded or abandoned excavation, pit, well, or hole dangerous to life;

L. To allow outside of any dwelling, building or other structures or within any unoccupied or abandoned building, dwelling or other structure, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator or other container which has an airtight door or lid, snap lock or other automatic locking device which may not be released from the inside, without first removing said door or lid, snap lock or other locking device from said refrigerator, icebox or container;

M. Nonoperational or abandoned vehicles or parts thereof, which are discarded or left in a state of partial construction or repair in any front yard, side yard, rear yard or vacant lot. The responsible person may have on his or her premises, at any one time, only one nonoperational or abandoned vehicle outside an enclosed building for a period not to exceed 14 days. (Ord. 2005-03(A) § 1, 2005; Ord. 99-14 § 1, 1999; Ord. 84-12 § 2, 1984).

#### **8.08.030 Person defined.**

For the purposes of this chapter, the word “person,” wherever used in this chapter, is held and construed to mean and include natural persons of either sex, firms, partnerships and corporations, and all associations of natural persons, whether acting by themselves or by a servant or employee. (Ord. 84-12 § 3, 1984).

#### **8.08.040 Abatement.**

A. When judgment is rendered against any person, firm or corporation finding them guilty of creating, keeping or maintaining a nuisance, as provided in this chapter, it shall be the duty of the court before whom the conviction is had, in addition to imposing the penalty or penalties provided in this chapter, to order the defendant or defendants in such action to forthwith abate and remove nuisance, and if the same is not done by the offender within 24 hours, the same shall be abated and

removed under the direction of the chief of police of the town, or any other officer authorized by the order of the court, and made a part of the judgment in the action.

B. Summary Abatement. Whenever any condition or use of the premises causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, and the responsible person(s) cannot be contacted or refuse(s) to immediately abate the condition, the enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement may become a civil debt against the owner or the responsible person and shall be collectible in the same manner as any other civil debt owing to the town or as otherwise provided in this chapter. (Ord. 99-14 § 2, 1999; Ord. 84-12 § 4, 1984).

#### **8.08.050 Liability for costs of abatement.**

Any person, firm or corporation found guilty of keeping or maintaining a nuisance as provided in this chapter is liable for all costs and expenses of abating the same when said nuisance has been abated by any officer of the town. The prosecution against the party liable, to be recovered as other costs are recovered; provided, that in such cases the town shall be liable in the first instance to pay the same, and in all cases where the chief of police or other officer abates any such nuisance, he shall keep an account of all expenses attending such abatement and in addition to the powers herein given to collect such costs and expenses, the town may bring suit for the same in any court of competent jurisdiction against the person, firm or corporation creating, keeping or maintaining the nuisance so abated. (Ord. 84-12 § 5, 1984).

#### **8.08.060 Buildings to be secured.**

Every agent or owner of any unoccupied building in the town shall keep the same securely closed at all times against persons who may enter and commit a nuisance therein. (Ord. 84-12 § 6, 1984).

#### **8.08.070 Suspension by license or permit.**

These provisions, or any of these provisions, may be suspended by the issuance of a proper license or permit by the town. (Ord. 84-12 § 8, 1984).

#### **8.08.080 Violation – Penalty.**

Any person, firm or corporation violating any of the provisions of this chapter or who creates, keeps

or maintains any nuisance defined, shall be subject to fine or imprisonment as provided in the general penalty ordinance; and for each act herein prohibited of a continuing nature, each day shall be considered a separate offense. (Ord. 84-12 § 7, 1984).

## Chapter 8.10

### LAND USE NUISANCES

#### Sections:

- 8.10.010 Finding and purpose.
- 8.10.020 Emergencies.
- 8.10.030 Other powers reserved.
- 8.10.040 Permit required.
- 8.10.050 Definitions.
- 8.10.060 Types of nuisances.
- 8.10.090 Prohibited conduct.
- 8.10.100 Duties of the director.
- 8.10.110 Duties of the commission.
- 8.10.120 Rules and regulations.
- 8.10.200 Determination of unfitness.
- 8.10.210 Standards for determination of unfitness.
- 8.10.220 Standards for determination to require repair or demolition.
- 8.10.300 Preliminary investigation.
- 8.10.310 Complaint or notice and order – Contents.
- 8.10.320 Service of complaint – Filing with county auditor.
- 8.10.330 Voluntary correction agreement.
- 8.10.400 Commission hearing on director's determination of unfitness.
- 8.10.410 Enforcement.
- 8.10.500 Appeal of commission decision.
- 8.10.510 Hearings before the town council.
- 8.10.520 Appeal to superior court.
- 8.10.600 Assessment and lien on the real property.
- 8.10.610 Cost of abatement and administrative fees.

#### **8.10.010 Finding and purpose.**

There exists within the town of Eatonville dwellings which are unfit for human habitation, and buildings, structures and premises, or portions thereof, which are unfit for other uses, due to dilapidation, disrepair, and structural defects, increasing the hazards of fire, accidents, or other calamities. It is necessary for the public health, safety and welfare to regulate, prevent and prohibit conditions which may constitute disorderly, disturbing, unsafe, unsanitary, fly-producing, rat-harboring and/or disease-causing places, conditions or objects. It is also necessary for the public social and economic welfare to regulate, prevent and prohibit conditions which degrade the town's scenic attractiveness and livability and its economic development.

The purpose of this chapter is the abatement of such nuisances, to protect the public health, safety and welfare and promote the economic development of the town, in accordance with Chapter 35.80 RCW. It is also the purpose of this chapter to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a menace to the health and welfare of the public and contribute to the depreciation of the character of neighborhoods and depreciation of property values. (Ord. 2005-03(A) § 2 (Att. § 3), 2005).

#### **8.10.020 Emergencies.**

The provisions of this chapter shall not prevent the director or any other officer of the town of Eatonville or other governmental unit from taking any other action, summary or otherwise necessary action to eliminate or minimize an imminent danger, health or safety of any person or property. (Ord. 2005-03(A) § 2 (Att. § 4), 2005).

#### **8.10.030 Other powers reserved.**

Nothing in this chapter shall be construed to abrogate or impair the powers of the courts or of any department of the town to enforce any provisions of this chapter or its ordinances or regulations, nor to prevent or punish violations thereof. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. Nothing in this chapter shall be construed to impair or limit in any way the power of the town of Eatonville to define and declare nuisances and to cause their removal or abatement, by summary proceeding or otherwise. (Ord. 2005-03(A) § 2 (Att. § 5), 2005).

#### **8.10.040 Permit required.**

Any work, including construction, repairs or alterations under this chapter to rehabilitate any building or structure may require a permit in accord with the provisions of Chapter 16.04 EMC. (Ord. 2005-03(A) § 2 (Att. § 6), 2005).

#### **8.10.050 Definitions.**

Unless specifically defined below or unless context clearly requires a different meaning, terms used in this chapter have the meanings given them by this section.

1. "Abandoned" refers to any property, real or personal, which is unattended and either open or unsecured so that admittance may be gained with-

out damaging any portion of the property, or which evidence indicates that no person is presently in possession, e.g., disconnected utilities, accumulated debris, disrepair and in the case of chattels, location.

2. "Abatement" means, for the purpose of this chapter, the correction of conditions which render dwellings unfit for human habitation and which render buildings and structures and premises, or portions thereof, unfit for other use. Either by repairing, replacing, removing, destroying or otherwise remedying the condition in question by such means and in such a manner and to such an extent as the director, in his judgment, determines is necessary in the interest of the general health, safety and welfare of the community.

3. "Boarded-up building" means any building the exterior openings of which are closed by extrinsic devices or some other manner designed or calculated to be permanent, giving to the building the appearance of nonoccupancy or nonuse for an indefinite period of time.

4. "Building" means any building, dwelling, structure, or mobile home, factory-built house, or part thereof, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

5. "Commission" means the planning commission of the town of Eatonville whose review and enforcement duties and procedures are prescribed under EMC 8.10.400 and 8.10.410.

6. "Costs" means the town's actual expenses incurred to correct illegal conditions pursuant to the provisions of this chapter plus the administrative fee provided herein.

7. "Director" means the director of public works, or his/her designee, or any other town official designated by the mayor.

8. "Disposable package or container" means all packages or containers defined as by such rules and regulations adopted by the State of Washington Department of Ecology.

9. "Health officer" means the head of the Pierce County health department, his/her authorized deputies or representatives.

10. "Interested person" means any person entitled to notice of a complaint issued by the director under EMC 8.10.320.

11. "Junk" includes the storage of all old appliances, equipment or parts thereof, all old iron or other scrap metal, cardboard, old lumber, old wood and mattresses, which items are not being used for their intended purpose, metal articles, broken stone

or cement and discarded building materials and does not include orderly stacked firewood.

12. "Litter" means and includes all waste material, including but not limited to disposable packages or containers thrown or deposited on public or private property.

13. "Nuisance" includes:

a. A nuisance defined by statute or ordinance;

b. A nuisance at common law, either public or private;

c. An attractive nuisance, whether in or on a building, a building premises or an unoccupied lot and whether realty, fixture or chattel, which might reasonably be expected to attract children of tender years and constitute a danger to them; including, but not limited to: abandoned wells, ice boxes or refrigerators with doors and latches, shafts, basements or other excavations, abandoned or inoperative vehicles or other equipment, structurally unsound fences or other fixtures, lumber, fencing, vegetation or other debris;

d. Uncleanliness or whatever is dangerous to human life or detrimental to health;

e. Abandonment or vacancy.

14. "Owner" means any person having any interest in the real estate in question as shown upon the records of the office of the Pierce County auditor, or who establishes his/her interest before the director, commission, or town council. For the purpose of giving notice, the term "owner" also includes any person in physical possession.

15. "Party of interest" means any person entitled to notice of a complaint issued by the director under EMC 8.10.320.

16. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee or any of them.

17. "Premises" means any building, lot parcel, real estate, land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips and all areas in or upon a street or alley right-of-way which abut land privately owned, or occupied by a property owner or occupier.

18. "Refuse" means vegetable offal, animal offal, discarded food, cans, bottles, waste paper, large tree limbs and all other waste substances from private and public establishments and from residences; but shall not include small amounts of weeds, twigs, grass or other material resulting from the normal tending of lawns and gardens.

19. "Repeat violation" means a violation by the same person of the same regulation in any location for which voluntary compliance has been sought within two years, or a complaint or notice and order has been issued within two years.

20. "Responsible person" means any agent, lessee, owner or other person occupying or having charge or control of any premises including any street and alley right-of-way which abuts said premises.

21. "Town council" means the town council of the town of Eatonville.

22. "Weed," "vegetable growth" and "horticultural growth" mean and include but are not limited to: trees, plants, shrubs, bushes, flowers, garden vegetables and grasses and further include all growths of every kind and character, whether domestic or wild, causing the obstruction or interference or detriment prohibited by this chapter. (Ord. 2005-03(A) § 2 (Att. § 7), 2005).

#### **8.10.060 Types of nuisances.**

Each of the following places, conditions or things is declared to constitute a public nuisance, and whenever the director determines that any of these conditions exists upon any premises, the director may require or provide for the abatement thereof pursuant to this chapter.

A. The growing, maintaining, permitting or allowing of any weed, vegetable or horticultural growth which:

1. Overhangs, encroaches upon, obstructs or in any manner interferes with the full and free use by the public of any street, sidewalk, or sidewalk area upon which such property so owned or occupied abuts; or

2. Has grown and died upon any premises owned, occupied or in control of the responsible person or persons and which constitutes a detriment to the public health, safety or welfare, including but not limited to a fire hazard; or

3. Is so overgrown upon any premises owned, occupied or in control of the responsible person or persons as to cause the degradation of the character of the neighborhood and for which a general rule of thumb shall be an average length of 12 inches or more; or

4. The public nuisance described above in this section and declared to be a nuisance shall include weeds, plants and vegetation as so described which grow upon any street and alley right-of-way or parking strip abutting private property.

B. The existence of any junk, litter, or refuse within the town when declared as a public nuisance by the commission and the director and confirmed by the mayor or his/her designee to have an impact on the town, neighbors, or neighborhood, unless such materials are kept or stored in an orderly and slightly manner and so as not to create a fire, safety, health or sanitary hazard;

C. The depositing, leaving or throwing away of any junk, litter or refuse within town for an unreasonable length of time beyond what is necessary for proper disposal, which length of time shall be not more than 30 days, or in covered containers or receptacles acceptable to the director or the commission, for the town;

D. The causing or permitting to be discharged, placed or thrown or the throwing into or upon any premises or any public street, sidewalk or alley of any nauseous, foul or putrid liquid or substance, or any liquid or substance likely to become nauseous, foul, offensive or putrid;

E. The maintaining, permitting or existence of any unsightly and unsafe partially destroyed building or structure that has not been repaired or removed within a reasonable period, which period shall be not less than 30 days, or exceed 180 days;

F. A reasonable period of time for all other nuisances, except those outlined in subsection E of this section, shall be not less than 21 days or exceed 30 days;

G. The allowing, growing or multiplying of any noxious weed as described in Chapter 17.10 RCW or in the Pierce County list of noxious weeds. (Ord. 2005-03(A) § 2 (Att. § 8), 2005).

**8.10.090 Prohibited conduct.**

A. It shall be unlawful for any responsible person(s) to create, permit, maintain, suffer, carry on or allow, upon their premises, any of the acts or things declared by this chapter to be a public nuisance.

B. It shall be unlawful for any person to create, maintain, carry on or do any of the acts or things declared by this chapter to be a public nuisance. (Ord. 2005-03(A) § 2 (Att. § 9), 2005).

**8.10.100 Duties of the director.**

The director is the chief administrative officer for the purposes of this chapter and his/her duties and powers include:

A. Investigation of all buildings and premises which he/she has reasonable grounds to believe may be unfit, substandard, boarded up, or a nuisance exists as stated in EMC 8.10.060;

B. Preparation, service and posting of complaints or notices and orders against buildings or premises where illegal conditions are believed to exist; and

C. Doing all things necessary and proper to carry out and enforce this chapter. (Ord. 2005-03(A) § 2 (Att. § 10), 2005).

**8.10.110 Duties of the commission.**

The duties and powers of the commission, as it relates to the enforcement of this chapter, shall include:

A. Conducting administrative hearings and rendering decisions based upon written findings; and

B. Doing all things necessary and proper to carry out and enforce this chapter. (Ord. 2005-03(A) § 2 (Att. § 11), 2005).

**8.10.120 Rules and regulations.**

The director and commission may make and promulgate such rules and regulations as will effectuate the purposes of this chapter and do substantial justice. The director and commission may recognize and give appropriate effect to special and extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards and other provisions of this chapter. Examples of circumstances which may warrant such exercise of discretion include, without limitation, medical illness or disability affecting a property owner's ability to respond to orders or appear at hearings and bona fide insurance coverage disputes which create a definite risk that enforcement of this chapter would unfairly result in a substantial economic loss to the property owner.

The director and the commission are authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. These powers shall include the following in addition to others herein granted:

A. 1. To determine which dwellings within the town are unfit for human habitation;

2. To determine which buildings, structures, or premises are unfit for other use or have on them a nuisance as described in EMC 8.10.060;

B. To administer oaths and affirmations, examine witnesses and receive evidence; and

C. To investigate the dwelling and other property conditions in the town and to enter upon premises for the purpose of making examinations when the commission or director has reasonable grounds for believing they are unfit for human habitation.

itation, or for other use; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted. (Ord. 2005-03(A) § 2 (Att. § 12), 2005).

#### **8.10.200 Determination of unfitness.**

The director after preliminary investigation, or the commission after the hearing provided in this chapter, or the town council after the appeal hearing provided in this chapter, may determine that a dwelling, building, structure, or premises is unfit for human habitation or other use, or has on it a nuisance as described in EMC 8.10.060, if the director, commission, or the town council finds that conditions exist in such dwelling, building, structure, or premises which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure, or premises, the occupants of neighboring dwellings, or other residents of the town. (Ord. 2005-03(A) § 2 (Att. § 13), 2005).

#### **8.10.210 Standards for determination of unfitness.**

In determining that a dwelling, building, structure, or other premises is unfit for human habitation or other uses, or has a nuisance on it, as described in EMC 8.10.060, the director, commission or the town council shall consider:

- A. Dilapidation;
- B. Disrepair;
- C. Structural defects;
- D. Defects increasing the hazards of fire, accidents or other calamities, such as parts standing or attached in such manner as to be likely to fall and cause damage or injury;
- E. Inadequate ventilation;
- F. Uncleaness;
- G. Inadequate light;
- H. Inadequate sanitary facilities;
- I. Inadequate drainage;
- J. Substandard conditions;
- K. Other conditions which affect the fitness of the building or premises for human habitation or other purposes, or devalue the property or surrounding property. (Ord. 2005-03(A) § 2 (Att. § 14), 2005).

#### **8.10.220 Standards for determination to require repair or demolition.**

A. If the conditions identified in EMC 8.10.210 or other conditions are found to exist to an extent dangerous or injurious to the health or safety of occupants of the building or premises, or the occupants of neighboring buildings or of other residents of the town, and if, without extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards, and other provisions of this chapter:

1. Structural deterioration is of such degree that:
  - a. Vertical members list, lean or buckle to the extent that a plumb line passing through the center of gravity falls outside the middle third of its base; or
  - b. i. Thirty-three percent of the supporting members shows damage or deterioration; or
    - ii. The cost of restoration exceeds 60 percent of the value of the building; or
    - iii. The building has been damaged by fire or other calamity, the cost of restoration exceeds 30 percent of the value of the building and it has remained vacant for six months or more, demolition shall be required. Value shall be determined by reference to a current edition of "Building Valuation Data" published by the International Conference of Building Officials or, if not published, as determined by the director. Cost of restoration is the actual estimated cost, which may be determined in the same manner as "value."

B. A voluntary correction agreement or other undertaking entered into by a party in interest, at or prior to the hearing before the commission, creates a presumption that the building or premises can be reasonably repaired. The failure to fulfill such a voluntary correction agreement or to accomplish such an undertaking may constitute grounds for the director to order demolition. Such an order shall be subject to appeal according to the provisions of this chapter for appeal of decisions of the commission.

C. If by reason of any of the above conditions a building is unfit, but no public necessity is found for its immediate demolition, the commission or the director may take other action, such as causing the property to be cleaned, cleared, vacated, secured or otherwise repaired, which will promote the public health, safety or general welfare. (Ord. 2005-03(A) § 2 (Att. § 15), 2005).

**8.10.300 Preliminary investigation.**

A. After the town learns of a possible unfit dwelling, building, structure, or nuisance on a premises, the director shall investigate whether such condition(s) actually exist(s). This investigation will usually include reasonable efforts to speak with the owner of the subject property, or the tenant if the property is rented. The director will make a record of the investigation, including:

1. Identification of the subject property.
2. Documentation of inspection actions, including relevant dates, efforts to establish identity of and contact owners and tenants.
3. Written observations relevant to possible conditions of unfitness, possibly including diagrams of the building or premises and photographs.
4. The director's conclusion whether or not the dwelling, building, structure, or other premises is unfit for human habitation or has on it a nuisance as described in EMC 8.10.060.

B. If the director determines no actual violation exists, he/she will note such determination for the record for the subject property and the matter shall be concluded. The director shall notify complainant(s), the owner(s), or other person(s) who has requested notice of his/her determination. (Ord. 2005-03(A) § 2 (Att. § 16), 2005).

**8.10.310 Complaint or notice and order – Contents.**

If, after preliminary investigation, the director determines that a dwelling, building, structure, or other premises is unfit for human habitation, or has on it any nuisance as described in EMC 8.10.060, the director shall serve, according to the provisions of EMC 8.10.320, a notice of unfitness and correction order, which may also be called a complaint, or a notice and order, which states:

A. A description of the conditions on the subject property which render such dwelling, building, structure, or premises unfit for human habitation or nuisance as described in EMC 8.10.060;

B. What must be done to correct such illegal condition(s);

C. The deadline for correction of such condition(s), which will allow a reasonable time for correction and will be set 48 hours before the matter will be presented at a meeting of the commission;

D. The costs or administrative fees which may be charged to the owner as a consequence of such conditions;

E. The place and date, not less than 10 or more than 30 days after the complaint or notice and order is served, where and when the matter will be pre-

sent to the commission, when the commission will be requested to:

1. Confirm the director's determination of unfitness;

2. Authorize the town to proceed to abate the illegal conditions at the dwelling, building, structure, or other premises;

3. Order that the owner pay the costs incurred by the town, through the date of the commission's confirmation of the illegal conditions, together with such costs as the town reasonably incurs to abate the illegal conditions;

F. That all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise and to give testimony at the time and place in the complaint;

G. The town's policy that the director may waive the town's costs and/or administrative fees for a first offense if the illegal conditions are corrected at least 48 hours prior to the commission hearing;

H. Invite the owner's cooperation and inform the owner of the town's policy that first offenders may negotiate a voluntary correction agreement consistent with the provisions of EMC 8.10.330 in which, among other things, the owner:

1. Admits that the illegal condition(s) exist(s);

2. Promises to correct the illegal condition(s) by an agreed deadline no more than 90 days from the original deadline, for dwellings, buildings, structures and chattels, or more than 15 days for all other nuisances;

3. Consents to entry on the subject property by the town to correct the illegal condition(s) in the event they are not corrected by the deadline;

4. Agrees to pay the town's costs to abate the illegal conditions if the owner fails to do so;

I. Advise the owner that if the illegal conditions are not corrected, the town may pursue the matter further by civil and/or criminal enforcement, in addition to further proceedings under this chapter;

J. Advise the owner of the town's policy that generally repeat offenders will be prosecuted;

K. Advise the owner and other interested persons of programs for assistance which may be provided by the town and such other programs and community resources as the director believes may assist the owner or others to correct the illegal conditions. (Ord. 2005-03(A) § 2 (Att. § 16), 2005).

### **8.10.320 Service of complaint – Filing with county auditor.**

If, after a preliminary investigation of any dwelling, building, structure, or premises in the town of Eatonville, the director finds that it is unfit for human habitation or has on it a nuisance as described in EMC 8.10.060, he/she shall cause to be served, either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Pierce County auditor's office and shall post in a conspicuous place on such property, a complaint or notice and order stating in what respects such dwelling, building, structure, or premises is unfit for human habitation or what nuisance as described in EMC 8.10.060 is on the premises. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the director in the exercise of reasonable diligence and the director makes an affidavit to that effect, then service of such complaint or notice and order upon such persons may be made either by personal service or by mailing a copy of the complaint or notice and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building or premises involved in the proceedings and mailing a copy of the complaint or notice and order by first-class mail to any address of each such person in the records of the Pierce County assessor or the Pierce County auditor. A copy of such complaint or notice and order shall also be filed with the Pierce County auditor, and such filing of the complaint or notice and order shall have the same force and effect as other notices provided by law. (Ord. 2005-03(A) § 2 (Att. § 17), 2005).

### **8.10.330 Voluntary correction agreement.**

A. The director may execute a voluntary correction agreement with the owner of a dwelling, building, structure, or premises the director determines is unfit for human habitation, or is in such condition as to devalue the property or surrounding property caused by a nuisance as described in EMC 8.10.060.

B. A voluntary correction agreement is a contract between the town and the owner in which such person agrees to abate the illegal conditions within a specified time and according to specified conditions. The voluntary correction agreement shall include:

1. The name and address of the owner and any other person bound under the contract;

2. The street address and a legal description sufficient to identify the premises;

3. A description of the conditions which render a dwelling, building, structure, or other premises unfit for human habitation or has a nuisance on it as described in EMC 8.10.060 and a reference to the provisions of this chapter or other regulation that has been violated;

4. The corrective action to be taken and a date and time by which the corrective action must be completed;

5. A stipulation by the owner that the illegal condition(s) identified in the complaint or notice and order do exist and that the corrections specified in the voluntary correction agreement are appropriate;

6. A stipulation by the owner that the town of Eatonville may abate the illegal condition(s) and recover costs and administrative fees as an assessment to the owner and a lien on the property pursuant to this chapter in the event of a material breach of the voluntary correction agreement;

7. The costs and administrative fees to be paid and by whom;

8. Permission by the owner for the town to enter upon the property at any reasonable times until the illegal condition(s) is abated; and

9. An acknowledgement.

C. The director may, in his or her sole discretion, extend deadlines for correction if the owner has been diligent and made substantial progress but has been unavoidably delayed.

D. The director may determine that a material breach of a voluntary correction agreement has occurred and may further determine what shall be done to abate the illegal conditions, which were the subject of the voluntary correction agreement. The director shall provide notice of such a determination in the same fashion as notice of decisions of the commission and such determinations shall function as a decision of the commission. A party to the voluntary correction agreement may appeal such a determination to the town council for review according to the procedures and standards applicable to appeals of decisions of the commission. (Ord. 2005-03(A) § 2 (Att. § 18), 2005).

### **8.10.400 Commission hearing on director's determination of unfitness.**

A. The commission shall be comprised of the members of the planning commission. The commission may adopt and publish such rules of procedure as are necessary or convenient to carry out and effectuate the purposes and provisions of this chap-

ter and Chapter 35.80 RCW. Five members of the commission shall constitute a quorum thereof for the transaction of business. Except as otherwise specified by law, a majority vote of the commission members present at a meeting shall be required and shall be sufficient to transact any business before the commission.

B. Unless, prior to the time fixed for hearing in the complaint or notice and order issued by the director, arrangements satisfactory to the director for the repair, demolition, vacation or re-occupancy of the building or premises is made, including the proper application for permits, or abatement of illegal conditions, the commission shall hold a hearing for the purpose of determining the immediate disposition of the dwelling, building, structure, nuisance, or other premises. The hearing will be canceled if the director approves the completed corrective action at least 48 hours before the scheduled hearing and the director shall provide the owner, complainants and other interested persons notice of the successful abatement of the illegal conditions.

C. The commission shall conduct a hearing pursuant to its adopted rules. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the commission. The director or his/her designee, the owner and other parties entitled to be served with the director's complaint or notice and order may participate as parties in the hearing and each party may call witnesses. Any complainant or person affected by the illegal conditions may appear and present evidence. The town shall have the burden of demonstrating by a preponderance of evidence that the building or premises is unfit for human habitation, or has on it a nuisance as described in EMC 8.10.060 and that the required corrective action is reasonable. The director's determination of unfitness shall be accorded substantial weight.

D. In the event of a tie vote of the commission, the matter shall be referred on an expedited basis to the town of Eatonville council for a new hearing and decision within 30 days. In such case, the council's decision shall be understood to take the place of a decision of the commission for the purposes of subsequent proceedings under this chapter. Appeals of the town council's decision in such case shall only be made to the Pierce County superior court.

E. If the owner or other persons with interest of record fail to appear at the scheduled hearing, the commission may enter an order under subsection F of this section, and noting the default.

F. If, after considering evidence and argument submitted by the director, the owner and other interested parties, the commission determines that the dwelling, building, structure, or premises is unfit for human habitation or has on it a nuisance as described in EMC 8.10.060, it shall issue and cause to be served upon the owner and other persons entitled to notice of the director's complaint and shall post in a conspicuous place on said property a written order which:

1. States its findings of fact and conclusions in support of such order; and

2. Requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises to render it fit for human habitation or has on it a nuisance described in EMC 8.10.060; and

3. Requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or abate said nuisance, if this course of action is deemed proper on the basis of said standards; and

4. States the town's costs and administrative fees which have been incurred as a consequence of the illegal conditions and that such costs and fees shall be charged to the owner and assessed against the real property if they are not paid timely; and

5. States that if the owner or party in interest, following exhaustion of his or her rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, premises, or abate said nuisance, the town may direct or cause such dwelling, building, structure, premises, or nuisance to be repaired, altered, improved, vacated, closed, removed or demolished and that the costs of such abatement by the town shall be charged to the owner and assessed against the real property where the abatement occurs.

G. The order shall state that the owner has the right to appeal to the town council within 30 days and unless he/she does appeal or comply with the order, the town shall have the power, without further notice or proceedings, to vacate, secure the building or premises, abate the nuisance and do any act required of the owner in the order of the commission, and to charge any expenses incurred thereby to the owner and assess them against the property.

H. The director shall serve the owner and other parties entitled to be served with the director's complaint a copy of the commission's decision by

certified mail, return receipt requested, within five business days following the hearing.

I. If no appeal is filed, a copy of such order shall be filed with the auditor of Pierce County and shall be a final order. (Ord. 2005-03(A) § 2 (Att. § 17), 2005).

#### **8.10.410 Enforcement.**

A. The order of the commission may prescribe times within which demolition shall be commenced or completed. If the action is not commenced or completed within the prescribed time, or if no time is prescribed within the time for appeal, the director may, after the period for appeal has expired, cause the building to be demolished and the premises to be suitably filled and cleared as provided by the chapter. If satisfactory progress has been made and sufficient evidence is presented that the work will be completed within a reasonable time, the director or the commission may extend the time for completion of the work. If satisfactory or substantial progress has not been made, the director may cause the building to be demolished and the premises suitably filled and cleared. The director shall let bids for any demolition in accordance with this chapter and the State Bid Laws.

B. If corrective action, other than demolition, ordered by the commission is not taken within the time prescribed, or if no time is specified within the time for appeal, the director may, after the period for appeal has expired, cause the action to be taken by the town or private contractor.

C. If the director deems it necessary to have the building secured as an interim measure for the protection of the public health and welfare while pending action, he/she may so order. If the owner is unwilling to secure the building within 48 hours, the director may order the building secured by the town.

D. If the owner is unable to comply with the commission's order within the time required and the time for appeal to the town council or petition to the court has passed, he/she may, for good and sufficient cause beyond his/her control, request in writing an extension of time. The commission or the town council may grant a reasonable extension of time after a finding that the delay was beyond the control of the owners. There shall be no appeal or petition from the commission or the town council's ruling on an extension of time. (Ord. 2005-03(A) § 2 (Att. § 18), 2005).

#### **8.10.500 Appeal of commission decision.**

A. The owner or any party in interest may, within 30 days from the date of service and posting of an order issued by the commission under the provisions of this chapter for buildings, dwellings, structures and chattels, file an appeal. All other nuisances' appeals must be filed within 10 days.

B. An appeal must be filed by a written notice of appeal with the town clerk setting out the reasons why the determination or order of the commission is erroneous. An appeal fee of \$100.00 shall be paid at the time the notice of appeal is filed with the town clerk.

C. The town council shall hear the appeal at the earliest possible time, but in no event less than 10 day nor more than 30 days after the date the notice of appeal is filed with the town clerk. The public hearing for the appeal will be scheduled to permit a final decision thereon to be made within 60 days after the filing of the appeal.

D. Notice of the time and place of the public hearing for the appeal shall be made in accord with EMC 8.10.320.

E. The filing of the notice of appeal shall stay the order of the director or commission, except so much thereof as requires temporary measures, such as securing of the building to minimize any emergent danger to the public health or safety.

F. The decision of the town council on the appeal shall be final and only appealable to the Pierce County superior court. (Ord. 2005-03(A) § 2 (Att. § 19), 2005).

#### **8.10.510 Hearings before the town council.**

A. Upon timely appeal, the town council shall review the proceedings and orders of the commission and determine whether to affirm, modify or vacate said orders.

B. The council's review is on the record, not de novo. In the absence of good cause, the town council will not accept new evidence or evidence that has not been made available to the commission. Upon the public hearing of the appeal, the town council shall consider the file of the proceedings before the commission and such other evidence as may be presented.

C. The town council shall review the record and such supplemental evidence as is permitted under subsection B of this section. The town council may grant relief only if the party seeking relief has carried the burden of establishing by a preponderance of the evidence that the standards set forth in subsections (C)(1) through (6) of this section have

been met. The standards include but are not limited to the following:

1. The commission engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

2. The commission's decision is an erroneous interpretation of the law;

3. The commission's decision is not supported by evidence that is substantial when viewed in light of the whole record before the town council;

4. The commission's decision is a clearly erroneous application of the law to the facts;

5. The commission's decision is outside the authority or jurisdiction of the commission; or

6. The commission's decision violates the constitutional rights of the party seeking relief.

D. The town council may recognize and give appropriate effect to special and extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards and other provisions of this chapter.

E. After the public hearing, the town council may affirm, modify or vacate the order of the commission, or may continue the matter to a date certain for further deliberation or presentation of additional evidence.

F. A record of the proceedings shall be made and kept for at least three years or until the matter is final, whichever is longer.

G. The town council shall cause its findings of fact and order to be made in writing; provided, that the town council may adopt the findings and order of the commission, or so much thereof as supports its decision. In addition, such order shall state that the owner has the right to petition the superior court of Pierce County for appropriate relief within 30 days after the order becomes final.

H. The town council's findings and order shall be served upon the same persons and posted in the same manner as a complaint or notice and order of the director.

I. Any action taken by the town council shall be final 60 days after the filing of a notice of appeal unless continued with consent of the owner or occupant.

J. In the event that the town council fails to reach a decision or continues the hearing beyond 60 days after the filing of an appeal, the director's or commission's findings and order shall be that of the town council and shall be final and subject to petition to the Pierce County superior court; provided, that any continuance at the request or with

the consent of any owner or occupant shall suspend, for the length of the continuance, the running of the 60 days allowed for final decision.

K. The town council's order shall be enforced in the same manner as an order of the commission.

L. A transcript of the appeal hearing before the town council shall be made available to the owner or other party in interest upon demand at the requestor's expense.

M. The findings, determinations and orders of the town council on appeals of determinations and orders issued by the commission shall be reported in the same manner and shall bear the same legal consequence as if issued by the commission, and shall be subject to review only in the manner and to the extent provided in EMC 8.10.520. (Ord. 2005-03(A) § 2 (Att. § 20), 2005).

#### **8.10.520 Appeal to superior court.**

Any interested person affected by an order issued by the town council pursuant to EMC 8.10.500 and 8.10.510 may, within 30 days after the posting and service of the order, petition to the superior court for an injunction restraining the town from carrying out the provisions of the order. Such trial shall be heard de novo. In all such proceedings the court is authorized to affirm, reverse, or modify the order of the town council. (Ord. 2005-03(A) § 2 (Att. § 20), 2005).

#### **8.10.600 Assessment and lien on the real property.**

A. The amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demolition or the abatement of any nuisance by the town, including the administrative fees established in this chapter, shall be assessed against the owner and shall be a lien against the real property upon which such costs and fees were incurred unless such amount is previously paid.

B. The clerk/treasurer or his/her designee shall certify any such assessment amount due and owing to the Pierce County treasurer, who, pursuant to RCW 35.80.030, shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes and when collected to be deposited to the credit of the general fund of the town. If the dwelling, building, structure, premises, or nuisance is removed or demolished by the town, the town shall, if possible,

sell the materials of such dwelling, building, structure, premises, or nuisance and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the commission, after deducting the town's costs and administrative fees incident thereto. (Ord. 2005-03(A) § 2 (Att. § 21), 2005).

#### **8.10.610 Cost of abatement and administrative fees.**

A. The costs of abatement, repair, alteration or improvement, or vacating and closing, or removal or demolition, when such actions are performed at the town's cost, shall be assessed against the real property upon which such costs were incurred unless paid. The director shall forward a report of such unpaid costs to the town's clerk/treasurer, who shall certify them to the Pierce County treasurer for assessment on the tax rolls, as provided by RCW 35.80.030(h).

B. Bids for demolition or repair shall be let only to a licensed contractor. The contract documents shall provide that the value of the materials and other salvage of the property shall be credited against the costs of the demolition. The contract documents may require bidders to estimate the salvage value of the property and by claiming the salvage, reduce the amount of his/her bid accordingly. The contract price fixed by acceptance of such a bid shall not be adjusted to reflect the actual salvage value. Such bids may be let prior to the time for compliance or appeal, but shall not be binding or accepted until the order for demolition is final. The mayor or his/her designee shall have the authority to sign the contract on behalf of the town.

C. Actual costs and expenses will be assessed in accord with the provisions of this section.

D. In addition to actual abatement costs, the following administrative fee shall be assessed and collected in the same manner for such dwelling, buildings, structures or premises, that are determined to be unfit for human habitation or have on them a nuisance as described in EMC 8.10.060:

1. Where abatement is accomplished and approved by the director prior to a commission hearing, the administrative fee shall be \$200.00, except that these fees shall be waived for a first offense if abatement is accomplished and approved 48 hours prior to a commission hearing.

2. Where abatement is accomplished and approved by the director less than 48 hours prior to a commission hearing, the administrative fee shall be \$300.00.

3. Where abatement is accomplished and approved by the director following breach of an agreement or understanding between the property owner(s) and the director, the commission, or the town council, the administrative fee shall be \$600.00.

4. Where the abatement is accomplished by the town following hearing or default of the property owner(s), the administrative fee shall be \$1,000.

E. The commission or the town council may, upon recommendation from the director, modify the amount, methods, or time of payment of such fees as the condition of the property and the circumstances of the owner may warrant. In determining such adjustments, the town council may reduce the costs to an owner who has acted in good faith and would suffer extreme financial hardship. The town council may, upon recommendation from the director, increase the administrative fees if it appears that the scheduled fees are inadequate to make the town whole with respect to a particular unfit dwelling, building, structure, premises or nuisance. (Ord. 2005-03(A) § 2 (Att. § 22), 2005).

## Chapter 8.11

### PUBLIC NOISE NUISANCES\*

Sections:

- 8.11.010 Purpose and findings of special conditions.
- 8.11.020 Definitions.
- 8.11.030 Sounds created by operation of motor vehicles.
- 8.11.040 Mufflers.
- 8.11.050 Modification of motor vehicles.
- 8.11.060 Tire noise.
- 8.11.070 Exhaust system.
- 8.11.080 Sale of new motor vehicles which exceed limits.
- 8.11.090 Public disturbance noises.
- 8.11.100 Public nuisance noises.
- 8.11.110 Exemptions.
- 8.11.120 Enforcement.
- 8.11.130 Violation – Penalty.
- 8.11.140 Severability.

\*Code reviser's note: Ord. 2005-17 adds this chapter as Chapter 8.10 EMC. It has been editorially renumbered to avoid duplication of numbering.

#### **8.11.010 Purpose and findings of special conditions.**

A. The purpose of this chapter is to regulate excessive intermittent noises that interfere with the use, value and enjoyment of property and which pose a hazard to the public health, safety and welfare.

B. This chapter is not intended to regulate the content of any form of speech or expression.

C. Findings of Special Conditions. The problem of noise in Eatonville has been observed by the town council and town staff and is documented by the complaints received and logged in the police department. On the basis of these observations and complaints, the town council finds that special conditions exist within the town of Eatonville which makes necessary any and all differences between this chapter and the regulations adopted by the Washington State Department of Ecology. (Ord. 2005-17 § 1, 2005).

#### **8.11.020 Definitions.**

A. "dB(A)" means the sound level measured in decibels using the "A" weighing network.

B. "Motorcycle" means any motor vehicle having a saddle for the use of a rider and designed to travel on not more than three wheels in contact

with the ground, except that farm tractors and vehicles powered by engines of less than five horsepower shall not be included.

C. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways and required to be licensed under RCW 46.16.010.

D. "Motor vehicle racing event" means any competition between motor vehicles and/or off-highway vehicles under the auspices of a sanctioning body licensed by Pierce County.

E. "Muffler" means a device consisting of a series of chambers or other mechanical designs for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing sound resulting therefrom.

F. "Off-highway vehicle" means any self-propelled motor-driven vehicle not used primarily for transporting persons or property upon public highways not required to be licensed under RCW 46.16.010. "Off-highway vehicle" shall include dirt bikes and all-terrain vehicles, but shall not include special construction vehicles.

G. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

H. "Property boundary" means the surveyed line at ground surface, which separates the real property owned, rented or leased by one or more persons from that owned, rented or leased by one or more other persons, and its vertical extension.

I. "Real property" means an interest or aggregate of rights in land which is guaranteed and protected by law. "Real property" includes a leasehold interest.

J. "Receiving property" means any real property within which sound originating from sources outside the property is received.

K. "Sound level meter" means a device which measures sound pressure levels and conforms to Type 1, S1A, 2 or S2A, as specified in the American National Standards Institute Specifications.

L. "Special construction vehicle" means any vehicle which is designed and used primarily for grading, paving, earth moving, and other construction work, and which is not designed or used primarily for the transportation of persons or property on a public highway, and which is only incidentally operated or moved over the highway.

M. "Warning device" means any device intended to provide warning of potentially hazardous, emergency or illegal activities including but not limited to an alarm system or vehicle back-up signal. (Ord. 2005-17 § 1, 2005).

**8.11.030 Sounds created by operation of motor vehicles.**

It is unlawful for any person to operate upon any public road any motor vehicle or any combination of motor vehicles under any conditions of grade, load, acceleration or deceleration in such manner as to exceed the following maximum permissible sound levels for the category of vehicle, as measured at a distance of 50 feet from the center of the lane of travel within the speed limits specified by measurement procedures established by the State Commission on Equipment.

**Table A**

Vehicle Category	35 mph or Less	Over 35 mph
Motor vehicles over 10,000 pounds GVWR or (GCWR)	86 dB(A)	90 dB(A)
Motorcycles	80 dB(A)	84 dB(A)
All other motor vehicles	76 dB(A)	80 dB(A)

(Ord. 2005-17 § 1, 2005).

**8.11.040 Mufflers.**

It is unlawful for any person to operate, or for any owner to permit any person to operate, any motor vehicle or motorcycle upon the public highways which is not equipped with a muffler in good working order and in constant operation. (Ord. 2005-17 § 1, 2005).

**8.11.050 Modification of motor vehicles.**

It is unlawful for any person to modify or change any part of a motor vehicle or motorcycle, or install any device thereon in any manner that permits sound to be emitted by the motor vehicle or motorcycle in excess of the limits prescribed by this chapter. It is unlawful for any person to remove or render inoperative, other than for purposes of maintenance, repair or replacement, any muffler or sound-dissipating device on a motor vehicle or motorcycle. (Ord. 2005-17 § 1, 2005).

**8.11.060 Tire noise.**

It is unlawful for any person to operate a motor vehicle or motorcycle in such manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason; provided, that sound resulting from emergency braking to avoid imminent danger shall be exempt from this chapter. (Ord. 2005-17 § 1, 2005).

**8.11.070 Exhaust system.**

It shall be unlawful for any person to operate any motor vehicle upon any public highway if the vehicle exhaust system exceeds the maximum permissible sound levels set forth below for the category of vehicle, as measured at a distance of 20 inches (0.5 meter) from the exhaust outlet under procedures established by the state of Washington in WAC 173-58-080, "Close Proximity Exhaust System Sound Level Measurement Procedure."

**Table B**

In Use Motor Vehicle Exhaust System Noise Performance Standards Measured at 20 Inches (0.5 Meter)	
Vehicle Category	Maximum Sound Level
Motorcycles	99 dB(A)
Automobiles, light trucks, and all other motor vehicles 10,000 pounds or less	95 dB(A)

(Ord. 2005-17 § 1, 2005).

**8.11.080 Sale of new motor vehicles which exceed limits.**

It is unlawful for any person to sell or offer for sale a new motor vehicle which produces a maximum sound level exceeding the following maximum permissible sound levels at a distance of 50 feet, by acceleration test procedures established by the State Commission on Equipment and set forth in Chapter 204-56 WAC, "Procedures for Measuring Motor Vehicle Sound Levels."

**Table C**

Vehicle Category	Maximum Sound Level
Motorcycles manufactured after 1975	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR manufactured after 1975 and prior to 1978	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR manufactured after 1978	83 dB(A)
All other motor vehicles	80 dB(A)

(Ord. 2005-17 § 1, 2005).

**8.11.090 Public disturbance noises.**

It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, a public disturbance noise. The following sounds are public disturbance noises:

A. Frequent, repetitive, or continuous sounds made by any animal which unreasonably disturb or interfere with the peace, comfort, and repose of property owners or possessors, except that such animal sounds which are made in animal shelters, commercial kennels, veterinary hospitals, pet shops, or pet kennels, licensed under EMC Title 5 are exempt from this subsection. Notwithstanding any other provision of this chapter, if the owner or other person having custody of the animal cannot, with reasonable inquiry, be located by the investigating officer or if the animal is a repeated violator of this subsection, the animal shall be impounded subject to redemption in the manner provided by Chapter 6.40 EMC;

B. The frequent, repetitive, or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;

C. Frequent, repetitive, or continuous sounds from starting, operating, repairing, rebuilding, or testing of any motor vehicle, motorcycle, dirt bike, or other off-highway vehicle, or any internal combustion engine, within a residential district, including vacant property adjacent thereto, so as to unreasonably disturb or interfere with the peace, comfort, and repose of owners or possessors of real property;

D. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure, or property or the contents therein except as permitted by law, and except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;

E. Any loud and raucous sound made within 1,000 feet of any school, hospital, sanitarium, nursing or convalescent facility;

F. Any loud and raucous sound made by the use of a musical instrument, whistle, sound amplifier, or other device capable of producing or reproducing sound which emanates frequently, repetitively, or continuously from any building, structure or property, such as sound originating from a band session, tavern operation, or social gathering and which unreasonably disturbs or interferes with the

peace, comfort, and repose of owners or possessors of real property in the area affected by such noise;

G. Yelling, shouting, hooting, whistling, or singing so as to unreasonably disturb or interfere with the peace, comfort, and repose of owners or possessors of property in the area affected by such noise;

H. Public disturbance noise from portable or motor vehicle audio equipment: while in park areas, residential or commercial zones, or any area where residences, schools, human service facilities, or commercial establishments are in obvious proximity to the source of the sound, it is unlawful for any person to negligently cause, make, or allow to be made from audio equipment under such person's control or ownership the following:

1. Sound from a motor vehicle sound system, such as a tape player, radio, or compact disc player, which is operated at such a volume that it could be clearly heard by a person of normal hearing at a distance of 50 feet or more from the vehicle itself;

2. Sound from audio equipment such as a tape player, radio, or compact disc player, which is operated at such a volume that it could be clearly heard by a person of normal hearing at a distance of 50 feet or more from the source of the sound;

3. This section shall not apply to persons operating portable audio equipment within a public park pursuant to an event sanctioned by a responsible authority under a valid permit or license. (Ord. 2005-17 § 1, 2005).

**8.11.100 Public nuisance noises.**

It is unlawful for any person to cause or allow to be emitted a public nuisance noise. A "public nuisance noise" is any noise which unreasonably annoys, injures, interferes with, or endangers the comfort, repose, health or safety of three or more persons residing within separate residences in the same community or neighborhood, although the extent of the nuisance impact may be unequal. (Ord. 2005-17 § 1, 2005).

**8.11.110 Exemptions.**

A. Between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00 p.m. on Saturdays and Sundays, the following shall be exempt from this chapter; however, other state restrictions may apply:

1. Sounds originating from residential property as a result of temporary projects for the construction, maintenance, or repair of homes, grounds, and appurtenances;

2. Sounds created by the discharge of fire-arms on authorized shooting or firing ranges;

3. Sounds created by blasting;

4. Sounds created by aircraft engine testing and maintenance not related to flight operations; provided, that aircraft testing and maintenance shall be conducted at remote sites whenever possible;

5. Sounds created by the installation or repair of essential utility services;

6. Sounds originating from temporary, non-residential construction sites as a result of construction activity are exempt from this chapter.

B. The following shall be exempt from this chapter:

1. Sounds from electrical substations and existing stationary equipment used in the conveyance of water or wastewater by a utility;

2. Sounds from existing industrial installations which exceed the standards contained in these regulations and which, over the previous three years, have consistently operated in excess of 15 hours per day as a consequence of process necessity and/or demonstrated routine normal operation. Changes in working hours which would effect exemptions under this regulation require approval of the director of public works;

3. Sounds commonly associated with an existing commercial operation which has been approved through a public hearing process and is operating in compliance with any permit conditions;

4. Sounds commonly associated with an existing commercial operation which was established prior to the effective date of any land use regulation(s) and is thereby nonconforming;

5. Sounds originating from aircraft in flight and sounds that originate at airports which are directly related to flight operations;

6. Sounds created by surface carriers engaged in interstate commerce by railroad;

7. Sounds created by warning devices not operated continuously for more than five minutes (bells, chimes, and carillons);

8. Sounds created by safety and protective devices where noise suppression could defeat the intent of the device or is not economically feasible;

9. Sounds created by emergency equipment and work necessary in the interests of law enforcement or for the health, safety, or welfare of the community;

10. Sounds originating from motor vehicle or motorcycle racing events at existing authorized

facilities, or being sanctioned by a responsible authority under a valid permit or license;

11. Sounds originating from officially sanctioned parades and other public events under a valid permit or license;

12. Sounds emitted from petroleum refinery boilers during startup of said boilers; provided, that the startup operation is performed during daytime hours whenever possible;

13. Sounds created by the discharge of fire-arms in the course of hunting;

14. Sounds created by the discharge of legal fireworks are exempt from this chapter between from 12:00 noon on June 28th, to 12:00 noon on July 5th between the hours of 10:00 a.m. to 11:00 p.m. (Ord. 2006-05 § 1, 2006; Ord. 2005-17 § 1, 2005).

#### **8.11.120 Enforcement.**

A. The Eatonville police department shall enforce the provisions of this chapter.

B. Enforcement on Complaint Only.

1. For public disturbance noise that is not related to motor vehicles and noise emanating from vehicles, enforcement shall be undertaken only upon receipt of a complaint made by a person who resides, owns or rents property, or is employed in the area affected by the public disturbance noise.

2. For public nuisance noise, enforcement shall be undertaken only upon receipt of a complaint or complaints of three or more persons residing within separate residences in the same community or neighborhood.

C. The sections of this chapter relating to motor vehicles and noise emanating from vehicles shall be subject to enforcement proceedings with or without a citizen's complaint.

D. With the exception of motor vehicle noise, noise created by industrial areas is to be regulated by the state of Washington.

E. In addition to other enforcement provided in EMC 8.11.120(A), animal control officers appointed pursuant to RCW 16.52.025 shall enforce the provisions of this chapter related to animal noises. (Ord. 2005-17 § 1, 2005).

#### **8.11.130 Violation – Penalty.**

A. Any person violating any motor vehicle performance standard of this chapter, or who shall create, keep, maintain, or allow to occur any noise related to motor vehicle performance standards, as defined herein, shall be guilty of a misdemeanor.

B. Any person violating any of the provisions of this chapter other than motor vehicle perfor-

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mance standards, or who shall create, keep, maintain, or allow to occur any public disturbance noise or public nuisance noise as defined herein shall be subject to a civil infraction citation in the amount of:

1. Fifty dollars for a first offence;
2. One hundred dollars for a second offence;
3. Two hundred fifty dollars for each additional offence.

C. Each act herein prohibited of continuing nature shall be considered a separate offense. (Ord. 2005-17 § 1, 2005).

**8.11.140 Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected. (Ord. 2005-17 § 1, 2005).

**Chapter 8.12****HAZARDOUS WASTE  
MANAGEMENT PLAN**

## Sections:

- 8.12.010 Adoption.  
8.12.015 Supplemental plan adopted.

**8.12.010 Adoption.**

The town adopts and incorporates herein by reference the hazardous waste plan adopted by the city of Tacoma and Pierce County entitled "Tacoma-Pierce County Local Hazardous Waste Management Plan – Final Draft April, 1990," three copies of which are on file with the clerk of the town. (Ord. 90-18 § 1, 1990).

**8.12.015 Supplemental plan adopted.**

The town adopts and incorporates in this section by reference the "Tacoma-Pierce County Local Hazardous Waste Management Plan of Supplemental Volume, October, 1990", three copies of which are on file with the clerk. This supplemental plan supplements the hazardous waste plan adopted by the town in EMC 8.12.010. (Ord. 91-1 § 1, 1991).

**Chapter 8.16****FIREWORKS**

## Sections:

- 8.16.010 Title.  
8.16.020 Declaration of intent.  
8.16.030 Definitions.  
8.16.040 License – Required.  
8.16.050 License – Prerequisite to issuance.  
8.16.060 License – Application.  
8.16.070 License – Preference.  
8.16.080 License – One issued per year.  
8.16.090 Operation of stands.  
8.16.100 Temporary fireworks stands.  
8.16.110 Lawful sale dates.  
8.16.120 Violation – Penalty.

**8.16.010 Title.**

The ordinance codified in this chapter shall be known as the fireworks ordinance of the town of Eatonville and may be cited as such. (Ord. 223 § 2, 1966).

**8.16.020 Declaration of intent.**

It is the intent of the ordinance codified in this chapter to provide a procedure for the granting of licenses, and the possession, sale and discharge of safe and sane fireworks as classified by the State Fire Marshal, and not to permit the possession, sale or use of any other fireworks classified as dangerous fireworks by the state fireworks law, or otherwise prohibited by the ordinances of the town of Eatonville. (Ord. 223 § 1, 1966).

**8.16.030 Definitions.**

"Dangerous fireworks" means every fireworks article which does not bear the "safe and sane" classification label of the State Fire Marshal.

"Safe and sane fireworks" means and includes only fireworks that have been classified and registered as "safe and sane" by the State Fire Marshal in conformity with Chapter 228, Session Laws of 1961, state of Washington. (Ord. 223 §§ 3, 4, 1966).

**8.16.040 License – Required.**

It is unlawful for any person, firm, copartnership or corporation to engage in the retail of fireworks within the town without first having obtained a license from the town clerk; the annual fee to be charged for the issuance of any such retail license shall be \$10.00, which fee shall cover but one retail sales outlet. (Ord. 223 § 5, 1966).

**8.16.050 License – Prerequisite to issuance.**

The fireworks license shall be issued only to such applicants who meet the following qualifications:

A. Nonprofit, charitable, religious or eleemosynary corporations organized and existing primarily for veteran, patriotic, religious, charitable or civic betterment purposes; and

B. Said corporation or association has its principal and permanent meeting place in the town and has been organized and established in the town for a period of at least one year prior to the date application is made for a fireworks license. (Ord. 223 § 7, 1966).

**8.16.060 License – Application.**

A. Application for license shall be made in writing accompanied by a license fee of \$10.00.

B. The application shall be made on or prior to the second Tuesday in April of each year. Applicants for any such license shall be notified by the town clerk of the granting or rejection of their application for license on or before the first Monday in May of each calendar year, and if any applicants are not granted a license, the fee shall be refunded. For the fireworks season of 1966, applications for a license may be made immediately upon the ordinance codified in this chapter becoming effective, and permits may be granted by the town clerk pursuant to said applications immediately thereafter until all authorized licenses for the year 1966, pursuant to the provision of the ordinance codified in this chapter have been granted.

C. Applications shall set forth the proposed location of the fireworks stand applied for.

D. Applications shall be accompanied by an assurance that if the license is issued to applicant, applicant shall, at the time of receipt of such license, deliver to the town clerk \$25,000 to \$50,000 public liability, and \$5,000 property damage insurance policy, with rider attached to the policy designating the town as an additional assured thereunder. (Ord. 223 § 8, 1966).

**8.16.070 License – Preference.**

Applicants for renewal of license shall be given preference over applicants for license not previously licensed; provided, that if the holder of the license fails to make application for renewal by the second Tuesday in April, said preference shall be forfeited. (Ord. 223 § 9, 1966).

**8.16.080 License – One issued per year.**

No one organization may receive more than one license for fireworks sales during any one calendar year. (Ord. 223 § 10, 1966).

**8.16.090 Operation of stands.**

No person other than the licensee organization or affiliates shall operate the stand for which the license is issued, or share or otherwise participate in the benefits of the operation of such stand. (Ord. 223 § 11, 1966).

**8.16.100 Temporary fireworks stands.**

A. All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is prohibited.

B. Temporary stands shall be subject to the following provisions:

1. No fireworks stand shall be located within 25 feet of any other building, nor within 50 feet of any gasoline station.

2. Fireworks stands need not comply with the provisions of the building code of the town, provided, however, that all stands shall be erected under the supervision of the fire chief of the town, who shall require that these stands be constructed in a manner which shall insure the safety of attendants and patrons, and shall be wired according to the town code. Approved fire extinguishers shall be maintained at stands at all times, in such number and capacity as the fire chief of the town shall require.

3. Each stand shall have at least two exits.

4. No fireworks stand shall be located closer than 600 feet to another fireworks stand.

5. All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least 20 feet surrounding the stand.

6. "No smoking" signs shall be prominently displayed on the fireworks stand.

7. Each stand shall be operated by adults only. No fireworks shall be left unattended in a stand.

8. All unsold stock and accompanying litter shall be removed from the location by 12:00 noon on the sixth day of July of each year. (Ord. 223 § 12, 1966).

**8.16.110 Lawful sale dates.**

It is unlawful for any person, firm, copartnership or corporation to offer for retail sale, expose for retail sale, sell at retail or use any fireworks within the town except from 12:00 noon on June 28th, to

12:00 noon on July 5th of each year. (Ord. 223 § 6, 1966).

**8.16.120 Violation – Penalty.**

Any person, firm, company or corporation who violates, disobeys, omits or neglects or refuses to comply with or resist the enforcement of any of the provisions of the ordinance codified in this chapter is guilty of a misdemeanor and shall upon conviction be punished by a fine not to exceed \$100.00 or by imprisonment for not more than 30 days or may be punished by both such fine and imprisonment; provided, that each separate day of violation shall constitute a separate violation of the ordinance codified in this chapter. (Ord. 223 § 13, 1966).

**Chapter 8.20**

**FALSE ALARMS**

Sections:

- 8.20.010 Intent of chapter.
- 8.20.020 Definitions.
- 8.20.030 Emergency response card required.
- 8.20.040 Fees.
- 8.20.050 Notice – Appeal.

**8.20.010 Intent of chapter.**

It is the intent of this chapter to reduce the number of false alarms occurring within the town and the resultant waste of town resources by providing for corrective administrative action, including fees and potential disconnection and criminal penalties. (Ord. 2004-01, 2004).

**8.20.020 Definitions.**

In this chapter, unless a different meaning plainly is required:

A. “Person” includes any natural person, partnership, joint stock company, unincorporated association or society, or a corporation of any character whatsoever.

B. “False alarm” includes the activation of a burglary or robbery alarm by other than a forced entry, attempted forced entry, unlawful entry, or actual robbery or attempted robbery on the premises and at a time when no robbery, burglary or crime involving a foreseeable risk of grievous bodily harm is being committed or attempted on the premises, or the activation of a fire alarm other than when an actual fire has occurred or is imminent. (Ord. 2004-01, 2004).

**8.20.030 Emergency response card required.**

It is unlawful to have or maintain on any premises a burglary, robbery, or fire alarm unless there is on file with the police department an emergency response card containing the name or names and current telephone number or numbers of person(s) authorized to enter such premises and turn off any alarm. Any alarm audible upon abutting property for a period in excess of 10 minutes is declared to be a public nuisance and may be summarily abated by the police department. (Ord. 2004-01, 2004).

**8.20.040 Fees.**

For police response to any false alarm, the town shall charge and collect from the person having or

maintaining such alarm on premises owned or occupied by the person fees as follows:

A. For a response to premises at which no other false alarm has occurred within the preceding six-month period, hereinafter referred to as a “first response,” no fee shall be charged. Upon first response, notice of conditions and requirements of this chapter shall be given to the owner or occupant of the premises on which the false alarm occurred and upon which the alarm is located.

B. For a second response to premises within six months after the first response, a fee of \$25.00 shall be charged. The person having or maintaining such alarm shall, within five working days after notice to do so, make a written report to the chief of police on prescribed forms setting forth the cause of such false alarm, the corrective action taken, whether and when such alarm has been inspected by authorized service personnel, and such other information as the chief of police may reasonably require to determine the cause of such false alarm, any mitigating circumstances and corrective action necessary. The chief of police may direct the person having or maintaining such alarm to have authorized service personnel inspect the alarm at such premises and to take other corrective action as prescribed by the chief of police. All costs of inspection and corrective action shall be borne by the individual having or maintaining the alarm on said premises.

C. For a third response to premises within six months after a second response, a fee of \$50.00 shall be charged, and if such third false alarm or any such succeeding false alarm occurs as a result of failure to take necessary corrective action prescribed under subsection B of this section, the chief of police may order the person having or maintaining the alarm to disconnect such alarm until the prescribed corrective action is taken and certification of such corrective action is provided to the police department; provided, that no disconnection shall be ordered relative to any premises required by law to have an alarm system in operation.

D. For a fourth response to premises within six months after the third response, and for all succeeding responses within six months of the last response, a fee of \$100.00 shall be charged. The chief of police may also order disconnection as provided in subsection C of this section. (Ord. 2004-01, 2004).

**8.20.050 Notice – Appeal.**

Notice of imposition of any administrative sanction, including the imposition of a fee or order of

disconnection, under the provisions of this chapter shall be given to the person having or maintaining an alarm on premises owned or occupied by him or her; provided, that with respect to business premises, the owner, manager or chief administrative agent regularly assigned and employed on the premises at the time of the occurrence of a false alarm shall be presumed to be the person having or maintaining said alarm on said business premises.

Any person subject to the imposition of a fee, order of disconnection or other administrative sanction under the terms of this chapter shall have a right of appeal therefrom to the town council. Unless notice of appeal is filed with the town clerk within 10 days of receipt of notice of imposition of an administrative sanction, said sanction is deemed to be final. (Ord. 2004-01, 2004).