

# TOWN OF UNDERHILL

## NUISANCE ORDINANCE

### I. PURPOSE

The purpose of this ordinance is to provide for the definition and abatement of public nuisances in the Town of Underhill, in order to assure homeowners' tranquil and carefree use of their property, without hindrance, interference or annoyance by the actions of neighboring property owners.

### II. AUTHORITY

This ordinance is enacted pursuant to the provisions of Title 24 VSA Chapter 61 2121,2246, and 2291(13) through 2291 (15).

### III. SCOPE

This ordinance addresses the definition and control of common residential nuisances, such as

1. Excessive noise
2. Objectionable lighting
3. Objectionable odors, noxious fumes and smoke
4. The accumulation and disposal of waste materials, scrap and junk, including derelict motor vehicles, and the operation of unauthorized junkyards; and
5. Removal and disposal of damaged or demolished structures.

### IV. VIOLATIONS

#### A. Excessive Noise

Noise that is excessive when measured at the boundaries of the subject property and represents a significant increase in noise levels in the vicinity of the neighboring properties so as to be incompatible with the reasonable use of the area shall not be permitted. The maximum sound pressure level radiated by a use or activity, measured at any point on the boundaries of the property on which the sound is generated, shall not exceed the following values:

<u>Octave band range, Hz</u>	<u>Sound pressure, decibels (dB)</u>
< 75	72
75-150	67
151-300	59
301-600	52
601-1,200	46
1,201-2,400	40
2,401-4,800	34
> 4,800	32

Between the hours of 11:00 PM and 6:00 AM maximum sound pressure levels shall not exceed 2/3 of the values tabulated above.

### B. Objectionable Lighting

Outdoor lighting fixtures shall be of a shielded, downward-directed design which does not cast direct illumination outside of a field having a maximum half angle (measured from the vertical) of sixty (60) degrees. In no case shall the illuminating source of a lighting fixture brighter than 4,000 lumens (approximately equivalent to the output of a 200-watt incandescent light bulb) be directly visible from any point on the boundaries of the subject property.

Reflecting surfaces which are a nuisance to neighboring property owners or which may impair the vision of the drivers of motor vehicles on nearby roads shall not be permitted. However, solar energy collectors which are part of an operating solar energy recovery system shall be exempted from this restriction.

### C. Objectionable Odors, Noxious Fumes And Smoke

It shall be unlawful to burn or otherwise dispose of waste, scrap materials or junk which may produce objectionable odors, noxious fumes or smoke in the open areas of any property except in accordance with the provisions of a properly-issued burn permit. Agricultural operations which meet the requirements of farming as defined in Title 10 VSA 6001 (22) and the provisions of the State's Accepted Agricultural Practice Regulations shall be exempted from this requirement.

### D. Accumulation Of Waste, Scrap Materials And Junk

It shall be unlawful to accumulate waste, scrap materials or junk in the open areas of any property except in a properly-licensed junkyard, within a properly-permitted building designated for that purpose (i.e.: a storage shed, utility building, garage or barn) or in an appropriately screened area. Storage materials for salvage and resale shall require a Conditional Use approval by the Zoning Board of Adjustment.

#### 1. Appliances, Motor Vehicle Parts & Other Scrap Metal

It shall be unlawful to accumulate in the open areas of any property discarded or scrapped household appliances, motor vehicle parts or other scrap metal parts aggregating a weight of two hundred (200) pounds or more and/or occupying a surface of one hundred (100) square feet or more.

#### 2. Building Materials

It shall be unlawful to accumulate in the open areas of any property discarded or scrapped building materials aggregating a weight of two hundred (200) pounds or more and/or occupying a surface of two hundred (200) square feet or more.

Examples of such material shall include, but not necessarily limited to:

- (a) Wood products
- (b) Concrete, bricks and masonry
- (c) Glass
- (d) Metals
- (e) Asphalt products
- (f) Fiberglass, vinyl and other plastics
- (g) Electrical wiring and insulation

Storage of raw (unfinished) building materials shall be allowed on a property on which a properly-permitted building activity is in progress. All excess or scrap building materials shall be removed and/or properly stored not more than sixty (60) days after the Administrative Officer's final inspection of the property has been accomplished.

### 3. Paper, Fiber & Fabrics

It shall be unlawful to accumulate in the open areas of any property discarded or scrapped paper, fiber and fabric materials aggregating a weight of seventy-five (75) pounds or more and/or occupying a surface of fifty (50) square feet or more.

### 4. Household Trash

Under no circumstances shall it be permissible to discard or dump household wastes or trash on the open areas of property in the Town of Underhill, regardless of the amount, weight, or size of the accumulated material.

### 5. Derelict/Unregistered Vehicles

It shall be unlawful to park, store or otherwise locate more than three junk motor vehicles or unregistered motor vehicles in the open areas of any property where they are visible from the main traveled way of a public highway. Motor vehicles abandoned on a property without the property owner's permission shall be removed in accordance with the provisions of 24 VSA Chapter 61, 2272.

### 6. Junkyards

It shall be unlawful for any person(s) or business entity(ies) to establish or operate a junkyard except in accordance with the provisions of Title 24 VSA Chapter 61, 2242(1) and (2). The owner(s)/operator(s) of such a facility shall have a valid Certificate of Approved Location for, and a License to Operate such a facility.

### Certificate Of Approved Location

Application for a Certificate of Approval Location shall be made in writing to the Town's Selectboard. The application shall be accompanied by a certification from the Board of Adjustment that the proposed location is not within an established zoning district which is restricted against such uses, or is otherwise contrary to the provisions of the Town's Zoning Regulations, and an application fee of (\$25 + cost of advertising and hearing). The proposed application shall contain a description of the land which is to be included in the proposed junkyard, by reference to the property's permanent boundary markers.

A hearing on the application shall be convened by the Selectboard not less than two nor more than four weeks from the date of receipt of the application. Notice of the date, time and location of the hearing shall be given to the applicant at the mailing address provided in the application by certified mail, and shall be publicly warned in a newspaper of general circulation within the Town not less than seven (7) days before the date of the hearing. In its deliberations, the Selectboard shall consider

- a) Proof of legal ownership or the right to the use of the subject property by the applicant;
- b) The nature and development of surrounding properties, such as the proximity of public highways, the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and
- c) Whether or not the proposed location can be reasonably protected from affecting the public health, safety or morals by reason of offensive or unhealthy odors or smoke, or of other causes.

No junkyard shall be established, operated or maintained in a location which is within one thousand (1,000) feet of the nearest edge of the right-of-way of a primary highway system, and visible from the main traveled way thereof at any season of the year, unless the location is designated as an industrial zone under the authority of State law, or is used for industrial activities as determined by the State of Vermont's Transportation Board with the approval of the U. S. Secretary of Transportation.

The Selectboard may also take into account the environment and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect. In this connection, the Selectboard may consider collectively the type of road serving the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the junkyard to neighboring properties as well as the reasonable availability of other suitable sites for the junkyard.

Within two weeks after the conclusion of the hearing, the Selectboard shall render a written decision as to whether or not the application should be granted, and shall give notice of their finding to the applicant by certified mail. If approved, the Certificate of Approved Location shall be issued to the applicant forthwith, and shall remain in effect for three years from the following July 1. Approval and issuance shall be personal to the applicant and not assignable. The Certificate of Approved Location shall be renewed every three years thereafter upon payment of a renewal fee of \$25.00 without hearing, provided all provisions of the Ordinance have been complied with during the previous period, and the junkyard has not become a public nuisance. Any person dissatisfied with the approval or denial of an application may appeal the Selectboard's decision to the Superior Court of Chittenden County.

#### License To Operate

Following the Selectboard's approval and issuance of a Certificate of Approved Location, the owner(s)/operator(s) of the proposed junkyard shall apply to the State's Transportation Board for a License to Operate, as required by the provisions of 24 VSA Chapter 61, 2261-2263. A copy of the License to Operate, if and when issued or renewed, shall be furnished to the Selectboard by the owner(s)/operator(s) to confirm the junkyard's compliance with the licensing requirements of State law and this Ordinance.

**E. Damaged/Demolished Structures**

Within one year after a permanent or temporary building or structure has been irretrievably damaged, destroyed, demolished or otherwise rendered uninhabitable, the property owner shall remove all structural materials in accordance with the provisions of current State and Federal waste disposal requirements, and shall fill any remaining excavation(s) to normal grade.

**V. ADMINISTRATION**

The Selectboard, or its designated agent(s), shall administer the provisions of this ordinance. Copies of the ordinance shall be available at the Town Clerk's Office.

**VI. PENALTIES**

Any person who violates the provisions of this ordinance may be charged with a criminal violation in accordance with the provisions of 24 VSA Chapter 59, 1974(a). The Selectboard or its designated agent shall institute in the name of the Town any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any construction or use, or to prevent in or about such premises any act, conduct, business or use which constitutes a violation of the provisions of this ordinance.

Pursuant to the provisions of 24 1974(a), the Town may institute civil enforcement of violations which occur under this ordinance. In such civil enforcement, a penalty of not more than one hundred dollars (\$100) may be imposed for a violation of any provision of this ordinance, and each day the violation continues shall constitute a separate offense. The Town may bring such civil violations before the Judicial Bureau in accordance with the provision of 23 VSA Chapter 24 and 24 VSA Chapter 59. Any cumulative civil penalties shall not exceed five hundred dollars (\$500).

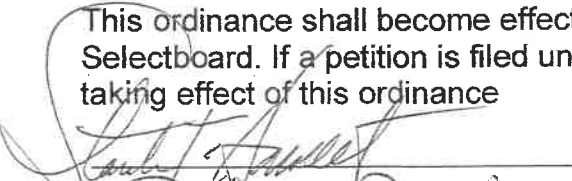

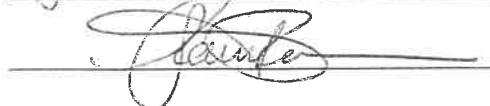
The Town shall issue Notices of Violation through the Selectboard (or a designee identified on a form signed by the Chair of the Selectboard). The Town's Selectboard shall establish, and may amend from time to time, a schedule of penalties and waiver fees for the various categories of ordinance violations.

**SEVERABILITY OF PROVISIONS**

The invalidity of any article or section of this ordinance shall not invalidate any other article or section thereof.

**EFFECTIVE DATE**

This ordinance shall become effective 60 days after its adoption by the Underhill Selectboard. If a petition is filed under 24 V.S.A. § 1973, the statute shall govern the taking effect of this ordinance

  
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9/24/02  
DATE