

**ORDINANCE NO. 2021-43**  
**AN ORDINANCE AMENDING THE CODE OF ORDINANCE**  
**CHAPTER 38**

WHEREAS, the Planning Department Staff has recommended that Brevard City Code of Ordinance, Chapter 38, Health and Sanitation be amended to clarify requirements for permits; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is generally consistent with the City of Brevard Comprehensive Plan; and,

WHEREAS, a legislative public hearing was conducted on Monday, September 20, 2021, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code of Ordinance be amended as outlined below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. Brevard City Code of Ordinance, Chapter 38, is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 02. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

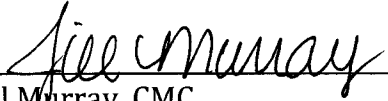
SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 04. This Ordinance shall be in full force and in effect from and after January 1, 2022.

Adopted and approved this the 20<sup>th</sup> day of September, 2021.




ATTEST:

  
\_\_\_\_\_  
Jill Murray, CMC  
City Clerk



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Mac Morrow  
Mayor Pro Tem

APPROVED AS TO FORM:

  
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Michael K. Pratt  
City Attorney

Chapter 38 - HEALTH AND SANITATION<sup>(1)</sup>

Footnotes:

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Cross reference— Solid waste management, ch. 58.

ARTICLE I. - IN GENERAL

Sec. 38-1. - Responsibility for enforcement of chapter.

The enforcement of this chapter shall be under the supervision of the designated city personnel and/or the county health officer. With respect to the enforcement of junked or nuisance motor vehicles or other conditions hereby described as detrimental, dangerous and hazardous to the health, safety and general welfare of the inhabitants of the city as enumerated in Section 38-32, the Chief of Police or designee shall investigate and serve as the code enforcement officer unless otherwise specified.

(Code 1980, § 8-1)

**State Law reference**— Powers and duties of local boards of health, G.S. 130A-39.

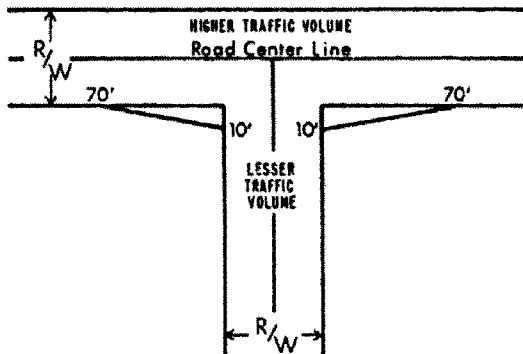
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Sec. 38-32. - Enumeration.

The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger and hazard to the health, safety, and general welfare of the inhabitants of the city, and the same are found, deemed and declared, to be public nuisances wherever the same may exist and are hereby declared unlawful; however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive.

- (1) Any condition which constitutes a breeding ground or harbor for rats, mosquitoes, harmful insects, or other pests.
- (2) Any growth or overgrowth of grass, weeds or other vegetation that is greater than 18 inches on the average, or any accumulation of dead weeds, grass, brush or undergrowth. This section shall not apply to lots that are natural area lots unless the lot is found to violate subsection 38-32(1) or 38-32(6). Natural area lots are lots that have never been cleared in anticipation of development, or lots that have been landscaped or replanted to appear as natural, undeveloped areas. If a natural area lot is adjacent to a property occupied by a dwelling or other structure, and that dwelling or other structure is located within 50 feet of the natural area lot, then the natural area lot shall comply with the requirements of this subsection to a depth of ten feet from said adjacent property line, however, this requirement shall not apply to property that consists of a ravine, creek bank or other severe slope where maintenance would be unsafe and the chance of erosion would increase if the vegetation were decreased.
- (3) Any concentration of combustible items including but not limited to mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes and rags.
- (4) Any collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind.
- (5) Any indoor furniture, indoor appliances, or metal products of any kind or nature openly kept which are broken or inoperable or have jagged edges of metal or glass, or areas of confinement.
- (6) Any condition which blocks, hinders, or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water; provided, the notices required and powers conferred by this article by and on the code enforcement officer in abating the nuisances defined by this subsection shall be given and exercised by the director of public works.

- (7) Any improper or inadequate drainage on private property which causes flooding or interferes with the use of or endangers in any way the streets, sidewalks, parks or other city-owned property of any kind; provided, the notices required and powers conferred by this article by and on the code enforcement officer in abating the nuisances defined by this subsection shall be given and exercised by the director of public works.
- (8) Any and all grass or weeds growing in any sidewalk and any hedges or plantings bordering thereon not properly trimmed; provided, the notices required and powers conferred by this article by and on the code enforcement officer in abating the nuisances defined by this subsection shall be given and exercised by the director of public works.
- (9) Any and all trees or bushes dead, diseased or not properly trimmed, or any object or growth within the sight distance, on private property adjacent to city street rights-of-way that constitute a hazard to city property or to the health or safety of motorists or pedestrians. "Sight distance" shall be defined as the area required to provide a ten-foot by 70-foot unobstructed view across property primarily located at street intersections, driveways, and along sharp horizontal curves in the roadway. No owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant, having control of any lot or land in the city, regardless of whether the lot is occupied or not, shall permit or maintain on such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb or middle of the alley or for ten feet outside the property line if there is no curb, any of the conditions described in this subsection. It shall be the joint and several duty of any owner, lessee and occupant of any lot or land to cut and/or remove or cause to be cut and/or removed all causes of such conditions as often as may be necessary to comply with the provisions of this chapter.



- (10) Any other condition specifically prohibited in this article, or any other condition specifically declared to be a nuisance or a danger to the public health, safety, morals and general welfare of inhabitants of the city and a public nuisance by the city council.

(Ord. No. 2013-01, § 2(Exh. B), 3-18-2013; Ord. No. 2016-28, § 1(Exh. A), 9-19-16)

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DIVISION 5. - ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES<sup>[2]</sup>

Footnotes:

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Cross reference— Traffic, ch. 66.

State Law reference— Authority to remove and dispose of junked and abandoned vehicles, G.S. 160A-303.

Sec. 38-151. - Administration of division.

The police department of the city shall be responsible for the administration and enforcement of this division. The city may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this division and applicable state laws. Nothing in this division shall be construed to limit the legal authority or powers of officers of the city police department and fire department in enforcing other laws or in otherwise carrying out their duties.

(Code 1980, § 8-80; Ord. No. 29-05, § 2(b), 11-21-05)

Sec. 38-152. - Definitions.

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

*Abandoned vehicle.* As authorized and defined in G.S. 160A-303, an abandoned motor vehicle is one that:

- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;
- (2) Is left on a public street or highway for longer than seven days;
- (3) Is left on property owned or operated by the city for longer than 24 hours; or
- (4) Is left on private property, without the consent of the owner, occupant or lessee thereof, for longer than two hours.

*Authorizing official* means the supervisory employee of the police department designated to authorize the removal of vehicles under the provisions of this division.

*Junked motor vehicle.* As authorized and defined in G.S. 160A-303.2, the term "junked motor vehicle" means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than \$100.00.

*Motor vehicle* and *vehicle* mean all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

*Nuisance vehicle* means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;
- (6) So situated or located that there is a danger of it falling or turning over;
- (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

(Code 1980, § 8-81; Ord. No. 29-05, § 2(b), 11-21-05)

**Cross reference—** Definitions generally, § 1-2.

Sec. 38-153. - Abandoned vehicles.

- (a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined in this division.
- (b) Upon investigation, proper authorizing officials of the city may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(Code 1980, § 8-82)

Sec. 38-154. - Nuisance vehicles.

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee or occupant of the real property upon which the vehicle is located, to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (b) Upon investigation, the authorizing official may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined in this division, and order the vehicle removed.

(Code 1980, § 8-83; Ord. No. 29-05, § 2(b), 11-21-05)

Sec. 38-155. - Junked motor vehicles.

- (a) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee or occupant of the real property upon which a junked motor vehicle is located, to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- (b) The authorizing official may order the removal of a junked motor vehicle as defined in this division after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:
  - (1) Protection of property values;
  - (2) Promotion of tourism and other economic development opportunities;
  - (3) Indirect protection of public health and safety;
  - (4) Preservation of the character and integrity of the community; and
  - (5) Promotion of the comfort, happiness and emotional stability of area residents.

(Code 1980, § 8-84; Ord. No. 29-05, § 2(b), 11-21-05)

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