

Health and Nuisances

PART 8

HEALTH AND NUISANCES

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CHAPTER 1

NUISANCES AND HEALTH GENERALLY

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SECTION 8-101 DEFINITIONS.

As used in this chapter, the following terms shall have the meanings respectively ascribed to them herein:

1. "Nuisance" means unlawfully doing an act, or omitting to perform a duty, or is any thing or condition which either:
 - a. Annoys, injures or endangers the comfort, repose, health or safety of others;
 - b. Offends decency;
 - c. Unlawfully interferes with, obstructs or tends to obstruct or render dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or other public property; or
 - d. In any way renders other persons insecure in life or in the use of property;

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2. "Private nuisance" means every nuisance not included in paragraph 3 of this section; and

3. "Public nuisance" means a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, or three (3) or more properties under separate ownership in the vicinity of such nuisance, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

SECTION 8-102 CERTAIN PUBLIC NUISANCES DEFINED.

A. In addition to other public nuisances declared by other sections of this code or law, the following are hereby declared to be public nuisances:

1. The sale or offering for sale of unwholesome food or drink; or the keeping of a place where such sales or offerings are made;

2. The sale, offering for sale or furnishing of intoxicating liquor in violation of the state law or ordinances of the town; or the keeping of a place where intoxicating liquor is sold, offered for sale, or furnished in violation of the state law or ordinances of the town;

3. The exposure, display, sale or distribution of obscene pictures, books, pamphlets, magazines, papers, documents, or objects; or the keeping of a place where such are exposed, displayed, sold or distributed;

4. The keeping of a place where persons gamble, whether by cards, slot machines, dice, punchboards or otherwise;

5. The keeping of a place where prostitution, illicit sexual intercourse or other immoral acts are practiced;

6. The keeping of a place where activities in violation of state law or ordinance are practiced or carried on;

7. The public exposure of a person having a contagious disease;

8. The continued making of loud or unusual noises, music or sounds, or strong vibrations which annoy persons of ordinary sensibilities; or the keeping of an animal which makes such noises;

9. The operation or use of any electrical apparatus or machine which materially and unduly interferes with radio or television reception by others;

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10. Any use of a street or sidewalk or a place adjacent thereto which causes crowds of people to gather so as to obstruct traffic on such street or sidewalk, or which otherwise obstructs traffic thereon, except as may be authorized by law or ordinances;

11. Permitting water or other liquid to flow or fall, or ice or snow to fall, from any building or structure upon any street or sidewalk where mosquitoes breed or are likely to breed, or which are so constructed, formed, conditioned, or situated as to endanger the public safety;

12. All wells, pools, cisterns, bodies or containers of water in which mosquitoes breed or are likely to breed, or which are so constructed, formed, conditioned or situated as to endanger the public safety;

13. Rank weeds or grass, carcasses, accumulations of manure, refuse or other things which are, or are likely to be, breeding places for flies, mosquitoes, vermin or disease germs, and the premises on which such exist;

14. Any building or structure which is dangerous to the public health or safety because of damage, decay or other condition;

15. Any pit, hole or other thing which is so constructed, formed, conditioned or situated as to endanger the public safety;

16. Any fire or explosion hazard which endangers the public safety;

17. Any occupation or activity which endangers the public peace, health, morals, safety or welfare;

18. Permitting bagworms to be upon any trees or other plants within the town;

19. Permitting foul, noxious or offensive odors to escape from premises; or unusual quantities of dust or other deleterious substances to escape or emanate across the property line upon which the same originates;

20. Any stable or other place where animals are kept that may become obnoxious or annoying to any resident of this town, by reason of any noise or noises made by the animal therein, or by reason of lack of sanitation;

21. The keeping in violation of Sections 4-101 et seq. of any dog kennels within this town for the breeding and raising of dogs that shall become offensive or annoying to the public by reason of the barking and noise made by the animals therein contained;

22. Any vault, cesspool or sink used to receive human excrement, slops, garbage, refuse or other filthy substance;

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23. Any pond, slop, trash, refuse, cobs, manure, decayed or decaying vegetable matter, left, kept or maintained in such condition as to endanger the public health;

24. The keeping of any hog pen within the limits of this town in violation of this code;

25. Every privy or water closet which shall be in an overflowing, leaking or filthy condition, or in a condition dangerous, injurious or annoying to the comfort, health and welfare of any resident of this town;

26. Any green or unsalted hides of any animal kept in any exposed or open place within the limits of this town;

27. Any unclean, foul, leaking or broken or defective ditch, drain, gutter, slop, garbage or manure barrel, box or other receptacle in this town; and

28. Every building or other structure that shall become unsafe and dangerous from fire, decay or other cause, or shall become hazardous from fire, by reason of age, decay or construction, location or other cause, or shall be detrimental to the health, safety or welfare of this town or its inhabitants from any cause.

29. An inoperable or junk vehicle located in a front, back or side yard of a residence.

30. The occupancy of any dwelling or dwelling unit which does not have an operable and working connection to a public water system and public sanitary sewer system or an approved private sewage disposal system.

B. The enumeration in Subsection A hereof of certain public nuisances shall be cumulative and not limit other provisions of law or ordinances defining public or private nuisances either in more general or more specific terms.

SECTION 8-103 NUISANCE PROHIBITED.

No person shall create or maintain a nuisance within the town or permit a nuisance to remain on premises under his control within the town.

SECTION 8-104 PERSON RESPONSIBLE FOR CONTINUING NUISANCE.

Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner, is liable therefor in the same manner as the person who first created it.

SECTION 8-105 TIME DOES NOT LEGALIZE NUISANCE.

No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

SECTION 8-106 REMEDIES AGAINST PUBLIC NUISANCES.

The remedies against a public nuisance are:

1. Prosecution on complaint before the municipal court;
2. Prosecution on information or indictment before another appropriate court;
3. Civil action; or
4. Abatement;
 - a. By the person injured as provided in Section 12 of Title 50 of the Oklahoma Statutes; or
 - b. By the town in accordance with law or ordinance.

SECTION 8-107 REMEDIES AGAINST PRIVATE NUISANCES.

The remedies against a private nuisance are:

1. Civil action; or
2. Abatement:
 - a. By the person injured as provided in Sections 14 and 15 of Title 50 of the Oklahoma Statutes; or
 - b. By the town in accordance with law or ordinance.

SECTION 8-108 TOWN HAS POWER TO DEFINE AND SUMMARILY ABATE NUISANCE.

As provided in Section 16 of Title 50 of the Oklahoma Statutes, the town is empowered to determine what is and what shall constitute a nuisance within its corporate limits and, for the protection of the public health, the public parks and the public water supply, outside of its corporate limits. Whenever it is practical to do so, the town has the power summarily to abate any nuisance after notice to the owner and an opportunity for him to be heard, if this can be done.

SECTION 8-109 SUMMARY ABATEMENT OF NUISANCES.

A. Some nuisances are of such nature as to constitute a grave and immediate danger to the peace, health, safety, morals or welfare of one or more persons or of the public generally. It is recognized that circumstances may be such as to justify, and even to require, the town or other appropriate officer or agency of the town government to take immediate and proper action summarily to abate such nuisances or to reduce or suspend the danger until more deliberate action can be taken toward such abatement.

B. An officer of the town may submit a statement as to the existence of a nuisance as defined by the ordinances of the town or law, and a request or recommendation that it be abated.

C. The town board of trustees, or its designee, or code enforcement officer shall determine if a nuisance exists as defined by the ordinances of the town or law. If a nuisance does in fact exist, town personnel shall direct the owner or other persons responsible for or causing the nuisance by:

1. Certified mail; or
2. Personal or residential service; or
3. By publication if the owner cannot be so served or found,

to abate the nuisance within a specified time if the peace, health, safety, morals or welfare of the person or persons or public adversely affected would not be unduly jeopardized by the consequent delay. If such peace, health, safety, morals or welfare would be unduly jeopardized by the consequent delay, or if the owner or other persons responsible for or causing the nuisance do not abate it within the specified time, or if the persons responsible authorize the town to abate the nuisance, the town shall direct the appropriate officer to abate the nuisance or have it abated, if summary abatement is practical, as authorized by Section 16 of Title 50 of the Oklahoma Statutes. The town shall send a statement of the cost of such summary abatement to the owner or other persons responsible for or causing the nuisance, as may be just under the circumstances, if their names and addresses are known. Until paid, such cost shall constitute a debt to the town collectible as other debts may be collected.

D. The determination of the existence of a nuisance and order to abate it, as made by the town, may be appealed by the occupant or owner or person causing the nuisance by filing a request for hearing in writing with the town clerk-treasurer within the period of time specified in the notice for abatement of the nuisance. The town clerk-treasurer shall cause the matter to be placed on the agenda of the town board of trustees for final determination with appropriate notice of the hearing provided to the person requesting the appeal.

SECTION 8-110 HEALTH NUISANCES; ABATEMENT.

A. Pursuant to authority granted by Section 1-1011 of Title 63 of the Oklahoma Statutes, the town shall have the authority to order the owner or occupant of any private premises in the town to remove from such premises, at his own expense, any source of filth, cause of sickness, condition conducive to the breeding Of insects or rodents that might contribute to the transmission of disease, or any other condition adversely affecting the public health, within twenty-four (24) hours, or within such other time as may be reasonable. Such order shall be in writing and may be served personally on the owner or occupant of the premises, or authorized agent thereof, by the town code enforcement officer, or by a police officer, or a copy thereof may be left at the last usual place of abode of the owner, occupant or agent, if known and within the state. If the premises are unoccupied and the residence of the owner, occupant or agent is unknown or is outside the state, the order may be served by posting a copy thereof on the premises or by publication in at least one issue of a newspaper having a general circulation in the town.

B. If the order is not complied with, the town may cause the order to be executed and complied with, and the cost thereof shall be certified and the cost of removing or abating such nuisance shall be charged to the owner or occupant, enforceable as a lien or any other method allowed by law or ordinance.

SECTION 8-111 TOWN ACTIONS NOT TO JEOPARDIZE PRIVATE ACTION.

Nothing herein contained shall be construed to abridge the rights of citizens of the town to bring and maintain actions in the proper courts for the abatement of private nuisances or those specially injurious to them.

SECTION 8-112 UNAUTHORIZED DUMPING, DEPOSITING OR DISPOSAL OF TRASH ON PROPERTY OF ANOTHER.

A. It is unlawful to place, deposit, or leave any trash, debris, refuse or garbage on the property of another or on public property, including any public street, easement, sidewalk or other public property, except where such disposal is expressly allowed by law.

B. It is unlawful for any person to place, deposit, leave or dispose of trash, garbage, refuse or debris in any dumpster or trash receptacle that is located on the property of another without the express consent of the person on whose property the dumpster or trash receptacle is located.

SECTION 8-113 OPEN BURNING PROHIBITED.

It is unlawful to burn any fire outside of any enclosed building in the town for the purpose of burning grass, trash, combustible refuse, leaves, weeds, papers, refuse,

garbage or any other substance except by obtaining a permit and payment of such fee as set by the town, or by approval by the fire department as may be allowed by the town fire code and any applicable state or town regulations.

SECTION 8-114 ABATEMENT BY SUIT IN DISTRICT COURT.

In cases where it is deemed impractical summarily to abate a nuisance, the town may bring suit in the district court.

SECTION 8-115 PROCEDURE CUMULATIVE.

The procedures for abating nuisances prescribed by this chapter and by other provisions of law and ordinance shall be cumulative one to the other. The town may elect to follow any such procedure which is applicable in abating any particular nuisance.

SECTION 8-116 TOILET FACILITIES REQUIRED.

A. For the purposes of this section, the following terms shall have the meanings respectively ascribed to them herein:

1. "Human excrement" means the bowel and kidney discharge of human beings;
2. "Sanitary water closet" means the flush type toilet which is connected with a sanitary sewer line of such capacity and construction as to carry away the contents at all times; and
3. "Sanitary pit privy" means a privy which is built, rebuilt or constructed so as to conform with the specifications approved by the Oklahoma state health department.

B. Every owner of a residence or other building in which humans reside, are employed or congregate within this town shall install, equip and maintain adequate sanitary facilities for the disposal of human excrement by use of a sanitary water closet or a sanitary pit privy. The closets and toilets hereby required shall be of the sanitary water closet type and hooked up to the town sewer or wastewater utility. A septic tank system or a pit privy may be used in such cases only if it meets the standards of and is approved by the state health department, and town sewer service is unavailable.

C. All human excrement disposed of within this town shall be disposed of by depositing it in closets and privies of the type provided for in this section. It is unlawful for any owner of property within the town to permit the disposal of human excrement thereon in any other manner, or for any person to dispose of human excrement within the town in any other manner.

D. All privies shall be kept clean and sanitary at all times, and the covers of the seats of privies shall be kept closed at all times when the privies are not being used.

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No wash water, kitchen slop or anything other than human excrement and toilet paper shall be emptied into a privy. No excrement from any person suffering from typhoid fever, dysentery or other serious bowel disease shall be deposited in any sanitary pit privy or sanitary water closet until it is disinfected in such a manner as may be prescribed by the health officer.

E. All facilities for the disposal of human excrement in a manner different from that required by this section and all privies and closets so constructed, situated or maintained as to endanger the public health are hereby declared to be public nuisances, and may be dealt with and abated as such. Any person maintaining any such nuisance is guilty of an offense and each day upon which any such nuisance continues is a separate offense.

F. No residence, business or commercial building, nor any other premises in the town which are capable of discharging waste water shall be connected to or in any manner served by a septic tank; no such person shall allow the installation, maintenance, operation or use of any septic tank in violation of this section.

SECTION 8-117 OBSTRUCTING HEALTH OR ENFORCEMENT OFFICER.

It is unlawful for any person to willfully obstruct or interfere with any health officer or other code enforcement officer charged with the enforcement of the health or nuisance laws of this town.

SECTION 8-118 LITTERING PROHIBITED GENERALLY.

No person shall throw, place, leave, drop, put or otherwise abandon litter upon any public property, private property, or roadway except as otherwise specifically permitted in this code. "Litter" means trash, refuse, rubbish and all like material.

CHAPTER 2

WEEDS, GRASS AND TRASH

Section 8-201 Definitions.

Section 8-202 Accumulation of trash or weeds unlawful.

Section 8-203 Duty of owner, occupant to maintain private property.

Section 8-204 Reports of accumulation of grass, weeds or trash on property.

Section 8-205 Cleaning and mowing, notice, consent, hearing, abatement, lien and payment.

Section 8-206 Political advertising on Right-of-way prohibited.

Section 8-207 Abandoned ice boxes, refrigerators.

SECTION 8-201 DEFINITIONS.

As used in this chapter, the following terms shall have the meanings respectively ascribed to them in this section:

1. "Administrative officer" means the person so designated by the town board of trustees;
2. "Cleaning" means the removal of trash from property;
3. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer;
4. "Trash" means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, waste, or matter of any kind or form which is uncared for, discarded or abandoned; and
5. "Weed" includes, but is not limited to, poison ivy, poison oak or poison sumac and all vegetation at any stage of maturity which:
 - a. Exceeds twelve (12) inches in height, except healthy trees, shrubs or produce for human consumption or grown in a tended and cultivated garden unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of the weeds;
 - b. Regardless of height, harbors, conceals or invites deposits or accumulation of refuse or trash;

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- c. Harbors rodents or vermin;
- d. Gives off unpleasant or noxious odors;
- e. Constitutes a fire or traffic hazard; or
- f. Is dead or diseased.

The term "weed" does not include tended crops on land zoned for agricultural use which are planted more than one hundred (100) feet from a parcel zoned on land zoned for other than agricultural use.

SECTION 8-202 ACCUMULATION OF TRASH OR WEEDS UNLAWFUL.

A. It is unlawful for any owner or occupant of any lot, tract or parcel of land situated wholly or in part within the corporate limits of the town to allow trash or weeds to grow, stand or accumulate upon such premises. It is the duty of such owner or occupant to remove or destroy any such trash or weeds.

B. No owner or occupant of land or lots shall:

1. Knowingly permit the throwing or dumping upon his premises of any refuse, rubbish or trash, or

2. Permit such materials to remain on his premises for more than ten (10) days after being notified to remove them by the town or the county health department whether or not the owner or occupant knew of or permitted such throwing or depositing.

In addition to a penalty for violation of this section or Section 8-203, the town may abate as a public nuisance any condition prohibited herein pursuant to this chapter, any other law or ordinance, all of which shall be cumulative.

SECTION 8-203 DUTY OF OWNER, OCCUPANT TO MAINTAIN PRIVATE PROPERTY.

No person owning, leasing, occupying or having charge of any private property or premises shall maintain or keep any refuse, rubbish, trash or similar material except dirt thereon; nor shall such person allow the accumulation of any such material; nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of other property in the neighborhood in which the premises are located. No prosecution may be undertaken under this section until such person shall have been given ten (10) days' notice by the town of the condition and an order to fully abate the alleged deficiency.

SECTION 8-204 REPORTS OF ACCUMULATION OF GRASS, WEEDS OR TRASH ON PROPERTY.

Any officer or employee of the town who discovers an accumulation of trash or the growth of grass and weeds, or both these conditions, upon any premises within the limits of the town, shall report the condition to the administrative officer or code enforcement officer if, as a result of the accumulation or growth, the premises appear to be:

1. Detrimental to the health, benefit and welfare of the public and the community;
2. A hazard to traffic;
3. A fire hazard to property; or
4. Any two (2) or more of these conditions.

SECTION 8-205 CLEANING AND MOWING, NOTICE, CONSENT, HEARING, ABATEMENT, LIEN AND PAYMENT.

The town administrative officer or code enforcement officer is authorized to cause property within the town to be cleaned of trash and weeds, or grass to be cut or mowed, and the nuisance to be abated in accordance with the following procedure:

1. The town administrative officer or his designee, or code enforcement officer may determine whether the accumulation of trash, growth of weeds or grass, or other nuisances has caused the property to become detrimental to the health, benefit or welfare of the public and the community or a hazard to traffic, or creates a fire hazard to the danger of the property;
2. At least ten (10) days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office before the hearing provided for herein or before action may be taken. The notice shall order the property owner to clean the property of trash, or to cut or mow the weeds or grass on the property, as appropriate, and the notice shall state that unless the work is performed within ten (10) days of the date of the notice, the work shall be done by the town and a notice of lien shall be filed with the county clerk against the property for the costs due and owing the town;
3. At the time of mailing of notice to the property owner, the town shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if the property owner can not

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be located within ten (10) days from the date of mailing the same, notice may be given by posting a copy of the notice on the property or by publication, as provided by Section 102.8 of Title 11 of the Oklahoma Statutes, one time not less than ten (10) days prior to any hearing or action;

4. If the town anticipates summary abatement of a nuisance in accordance with the provisions as herein provided, the notice, whether by mail or publication, shall state: that any accumulations of trash or excessive weeds or grass growth on the owner's property occurring within six (6) months after the removal of trash or cutting or mowing of weeds or grass on the property pursuant to the notice may be summarily abated by the town; that the costs of such abatement shall be assessed against the owner; and that a lien shall be imposed on the property to secure such payment, all without further notice to the property owner. At the time of each summary abatement the town clerk-treasurer shall notify the property owner of the abatement and costs thereof. The notice shall state that the property owner may request a hearing within ten (10) days after the date of mailing, the notice. Unless otherwise determined at the hearing, the cost of such abatement shall be determined and collected as provided in this section. However, these summary abatement procedures shall not apply if the records of the county clerk show that the property was transferred after the notice was given pursuant to this section;

5. The owner of the property may give his written consent to the town authorizing the removal of the trash or the mowing of the weeds or grass. By giving his written consent, the owner waives his right to a hearing by the town;

6. A hearing may be held by the administrative officer to determine whether the accumulation of trash or the growth of weeds or grass has caused the property to become detrimental to the health, benefit or welfare of the public and the community or a hazard to traffic or creates a fire hazard to the danger of property. The property owner shall have a right of appeal to the town administrative officer, except that if the town administrative officer conducts the initial hearing, then the right of appeal is to the town board of trustees. The appeal shall be taken by filing written notice of appeal with the town administrative officer within ten (10) days after the administrative order is rendered.

7. If the administrative officer finds the condition of the property constitutes a detriment or hazard and that the property would be benefited by the removal or such conditions, the administrative officer shall direct the mowing, clearing or cleaning be done by one of the following methods:

- a. By the town, provided the actual cost of the labor, maintenance and equipment required does not exceed Five Hundred Dollars (\$500.00); or
- b. On a private contract basis, in which case it shall be awarded to the lowest and best bidder;

The agents of the town are granted the right of entry on the property for the removal of trash, mowing of weeds or grass, cleaning and performance of necessary duties as a

governmental function of the town. Immediately following the cleaning or mowing of the property, the town clerk-treasurer shall mail a notice of lien with the county clerk describing the property and the work performed by the town, and stating that the town claims a lien on the property for the cleaning and mowing costs, and that such costs are the personal obligation of the property owner from and after the date of filing of the notice;

8. After the property has been mowed and/or cleaned, the administrative officer shall determine the actual cost of such cleaning and any other expenses as may be necessary in connection therewith, including the cost of the notice and mailing. The town clerk-treasurer shall forward by mail to the property owner specified in this section a statement of the actual cost and demanding payment;

9. If payment is not made within thirty (30) days from the date of the mailing of the statement, then within the next sixty (60) days the town clerk-treasurer shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located, and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. The cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer and shall continue until the cost shall be fully paid;

10. At any time prior to the collection as provided herein, the town may pursue any civil remedy for collection of the amount owing and the interest thereon. Upon receiving payment, if any, the town clerk-treasurer shall forward to the county treasurer a notice of such payment and directing discharge of the lien or part thereof; and

11. The provisions of this section shall not apply to any property used for agricultural purposes.

SECTION 8-206 POLITICAL ADVERTISING ON RIGHTS-OF-WAY
PROHIBITED.

A. A political advertising sign is defined as any sign, poster or placard printed, painted, made or designed for the purpose of furthering or advertising the candidacy of any person who is or intends to become or may be a candidate for the election to any public office, whether such public office be in the local, state or federal government, or any subdivision thereof.

B. No person, firm or corporation shall erect or display any political advertising sign on any street or alley right-of-way, or upon any public utility easement within the Town of Sperry.

C. No person, firm or corporation shall place, tack, nail, staple or glue any political advertising sign on any telephone, telegraph, electric or street lighting pole within the Town of Sperry.

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D. Any political advertising sign erected, placed or displayed in violation of the provisions hereof shall be a public nuisance. No property right shall exist in such sign erected, placed or displayed in violation of the provisions of this section.

SECTION 8-207 ABANDONED ICE BOXES, REFRIGERATORS.

It is unlawful for any person to leave in a place accessible to children any abandoned, unattended, or discarded ice box, refrigerator, or other container which has an airtight door with a lock or other fastening device which cannot be easily released for opening from the inside of the ice box, refrigerator, or container, without first removing the door, lock, or fastener.

CHAPTER 3

DILAPIDATED BUILDINGS

Section 8-301	Definitions.
Section 8-302	Report to be made.
Section 8-303	Condemnation, boarding and securing of dilapidated buildings, notice, removal, lien, payment.
Section 8-304	Clearing up of premises from which buildings have been removed.
Section 3-305	Penalty.

SECTION 8-301 DEFINITIONS.

For the purposes of this chapter:

1. "Boarding and securing" or "boarded and secured" means the closing, boarding or locking of any or all exterior openings so as to prevent entry into the structure;
2. "Cleaning" or "cleaned" means the removal of trash or weeds from the premises;
3. "Dilapidated building" means:
 - a. A structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health or safety or welfare of the general public;
 - b. A structure which is unfit for human occupancy due to the lack of necessary repairs and is considered uninhabitable or is a hazard to the health, safety, or welfare of the general public;
 - c. a structure which is determined by the Board of Trustees or Town Administrator to be an unsecured building, more than three times within any twelve-month period;
 - d. a structure which has been boarded and secured, for more than eighteen (18) consecutive months;
 - e. a structure declared by the Board of Trustees to constitute a public nuisance.
4. "Unsecured building" shall mean any structure which is not occupied by a legal or equitable owner thereof, or by a lessee of a legal or equitable owner, and into

which there are one or more unsecured openings such as broken windows, unlocked windows, broken doors, unlocked doors, holes in exterior walls, holes in the roof, broken basement or cellar hatchways, unlocked basement or cellar hatchways or similar unsecured openings which would facilitate an unauthorized entry into the structure.

5. "Unfit for human occupancy" means a structure that due to lack of necessary repairs is considered uninhabitable and is a hazard to the health, safety and welfare of the general public.

SECTION 8-302 REPORT TO BE MADE.

Any officer or employee of the town who discovers or receives a report of a dilapidated building which has become detrimental to the health, safety and welfare of the public and the community or creates a fire hazard to such property or other property shall report such conditions to the Code Enforcement Officer, Administrative officer or Mayor.

SECTION 8-303 CONDEMNATION, BOARDING AND SECURING OF
DILAPIDATED BUILDINGS, NOTICE, REMOVAL, LIEN,
PAYMENT.

The Board of Trustees may cause dilapidated buildings within the town limits to be torn down and removed, or boarded or secured, in accordance with the following procedures:

1. At least ten (10) days' notice shall be given to the owner of the property before the town takes action or holds a hearing as provided herein. A copy of the notice shall be posted on the property to be affected. In addition, a copy of the notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. At the time of mailing of notice to any property owner or mortgage holder, the town shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property, or by publication, as defined by Section 1-102 of Title 11 of the Oklahoma Statutes. Such notice may be published once not less than ten (10) days prior to any hearing or action to be taken pursuant to this section.

2. A hearing shall be held by the Board of Trustees of the Town of Sperry to determine whether the property is dilapidated and has thereby become detrimental to the health, benefit and welfare of the public and the community, or creates a fire hazard which is dangerous to other property, or needs to be boarded and secured.

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3. If the Board of Trustees finds and determines that the condition of the property constitutes a detriment or a hazard, and that the property would be benefited by the removal of such conditions by removal of a dilapidated structure or structures, or by its boarding and securing, the Board of Trustees may cause the dilapidated building(s) to be torn down and removed, and/or boarded and secured, and shall fix reasonable dates for the commencement and completion of the work. The town clerk-treasurer shall immediately file a notice of lien with the county clerk describing the property, the findings of the Board of Trustees at the hearing, and stating that the town claims a lien on the property for the destruction and removal, boarding and securing costs and that such costs are the personal obligation of the property owner from and after the date of filing of the notice. In accordance with 11 O.S. § 22-112, the agents of the town are granted a right of entry on the property for the performance of necessary duties as a governmental function of the town if the work is not performed by the property owner within dates fixed by the Board of Trustees. Any action to challenge the order of the Board of Trustees shall be filed within thirty (30) business days from the date of the order.

4. If the work is not performed by the property owner within the dates fixed by the Board of Trustees, then the Board of Trustees shall direct the tearing down and removal, or boarding and securing of a dilapidated building be done by one of the following methods:

- a. By the town; or
- b. On a private contract basis, in which case it shall be awarded to the lowest and best bidder;

5. After the dilapidated building has been torn down and removed, and/or boarded and secured, the Board of Trustees, Mayor or Code Enforcement officer shall determine the actual cost of the dismantling and removal of dilapidated buildings, or the boarding and securing thereof, and any other expenses as may be necessary in conjunction therewith, including the cost of notice and mailing. The town clerk-treasurer shall forward a statement of such actual cost attributable to the dismantling and removal or boarding and securing and a demand for payment by mail to the property owner at the address specified in this section. In addition, a copy of the statement shall be mailed to any mortgage holder at the address specified in this section. At the time of mailing of the statement of costs to any property owner or mortgage holder, the town shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailer.

6. If payment is not made within six (6) months from the date of the mailing of the statement, the town clerk-treasurer shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. The town shall have a lien on the property for such costs, together with interest thereon, and the lien shall continue until fully paid. Once certified to the county treasurer, payment may only be made to the county treasurer except as otherwise provided by this chapter. If the county treasurer and the town agree that the county treasurer is unable to

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collect the assessment, the town may pursue a civil remedy for collection of the amount owing and interest thereon, including an action thereon, *in personam*, against the property owner and an action, *in rem* to foreclose its lien against the property.

7. When payment is made to the town for costs incurred, the town shall file a release of lien or partial release thereof;

8. The provisions of this section shall not apply to any property zoned and used for agricultural purposes; and

9. Nothing in this section shall prevent the town from otherwise abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the public health, safety or welfare.

SECTION 8-304 CLEARING UP OF PREMISES FROM WHICH BUILDINGS HAVE BEEN REMOVED.

In all cases in which:

1. A house or building has been removed before the taking effect of this chapter; or

2. A house or building is torn down or demolished pursuant to order of the State Fire Marshal or one of his assistants or the sheriff of the county or the chief of the town fire department as provided by state law or as provided in this chapter;

and in which any of the following conditions exist,

1. The premises have not been cleaned up;

2. The premises are cleaned up, and all lumber, brick, concrete, cement, plaster, nails, wire, and other material have not been removed;

3. The materials removed but the cellar space and excavations have not been filled;

4. A cistern or well has not been filled or safely and securely closed and all openings to sanitary sewer have not been plugged to meet the requirements of the town plumbing inspector and securely closed; and

5. The lot or lots have not been leveled and left entirely free from trash or the same be not immediately done,

then the owner or owners of the lot or lots and the person, firm, or corporation who tore down the house or building shall immediately comply with the provisions of this chapter by having all of the things done.

SECTION 8-305 PENALTY.

Any person who shall tear down or begin the tearing down of any house or building within the town limits of the town without having first procured permit therefor as herein provided shall be guilty of an offense against the town and upon conviction thereof shall be punished as provided in Section 1- 108 of this code.

CHAPTER 4

JUNKED, WRECKED MOTOR VEHICLES

Section 8-401	Nuisance.
Section 8-402	Definitions.
Section 8-403	Junk motor vehicles prohibited, exceptions.
Section 8-404	Junk motor vehicles nuisance; removal.
Section 8-405	Notice.
Section 8-406	Removal by code enforcement officer.
Section 8-407	Recovery by owner.
Section 8-408	Sale.
Section 8-409	Penalty.

SECTION 8-401 NUISANCE.

Motor vehicles which are abandoned, dismantled, partially dismantled, wrecked, junked, inoperative, or discarded, or left about the city in places other than authorized and properly-zoned junk or salvage yards or other areas authorized by the town board of trustees and which tend to do any one or more of the following:

1. Impede traffic in the streets;
2. Reduce the value of private property;
3. Create fire hazards;
4. Extend and aggravate urban blight; or

5. Result in a serious hazard to the public health, safety, comfort, repose, convenience and welfare of the residents of the city, are hereby declared to be a nuisance.

SECTION 8-402 DEFINITIONS.

For the purpose of this chapter, the following terms, phrases, words, and their derivatives shall have the meaning given herein.

1. "Motor vehicle" is any vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to, automobiles, buses, motor bikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts, campers and trailers;

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2. "Junk motor vehicle" is any motor vehicle, which does not have lawfully affixed thereto an unexpired license plate or plates and the condition of which is wrecked, dismantled, partially dismantled, inoperative, unserviceable abandoned, or discarded;

3. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind;

4. "Private property" means any real property within the town which is privately owned and which is not public property as defined in this section; and

5. "Public property" means any street, alley, or highway, which shall include the entire width between the boundary lines of every way publicly owned or maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.

SECTION 8-403 JUNK MOTOR VEHICLES PROHIBITED, EXCEPTIONS.

No person shall deposit, store, keep or permit to be deposited, stored or kept upon public or private property, in the open, a junk motor vehicle or any vehicle legally or physically incapable of being operated for a period exceeding one hundred sixty-eight (168) hours unless such vehicle or parts thereof are:

1. Completely enclosed within a building;
2. Stored in connection with a business lawfully established pursuant to the zoning ordinances of the town; or
3. Stored on property lawfully designated under the zoning ordinances of the town as a place where such vehicles may be stored.

SECTION 8-404 JUNK MOTOR VEHICLES NUISANCE; REMOVAL.

The accumulation or storage of one or more junk motor vehicles or parts thereof shall constitute a nuisance detrimental to the health, safety and welfare of the inhabitants of the Town of Sperry. It is the duty of the owner or person in control of such vehicle, or the parts thereof, or the owner of the private property, lessee or person in possession or control of the property upon which such vehicle is located, to cause to be removed or remove the vehicle from such property, or have the vehicle housed in a building, where it will not be visible from the street or other private property. Such removal or enclosure shall be made within one hundred sixty-eight (168) hours after notice as set out in Section 8-403 has been given to the owner or person in control of the vehicle or the owner, lessee or person in control of the property upon which such vehicle is located. The one hundred sixty-eight (168) hour time limit may be extended by the code enforcement officer in the case of obvious hardship.

SECTION 8-405 NOTICE.

The code enforcement officer or any police officer of the town, upon complaint of any citizen or on the officer's own volition, shall cause notice to be posted on such junk motor vehicle, that the vehicle is a nuisance and shall be removed within one hundred sixty eight (168) hours as required in Section 8-404 of this code.

SECTION 8-406 REMOVAL BY CODE ENFORCEMENT OFFICER.

Upon any failure of the owner or person in control of the junk motor vehicle or vehicles or the owner, lessee, or person in control of the property upon which the junk motor vehicle or vehicles may be located, to remove the vehicle or place it in an enclosed building within one hundred sixty-eight (168) hours after notice has been placed on the vehicle, the town code enforcement officer or police officer shall promptly cause the vehicle and its parts to be removed and stored in a proper place.

SECTION 8-407 RECOVERY BY OWNER.

The owner or person in control of any vehicle or vehicles so removed may regain possession thereof by making application to the chief of police for the town within thirty (30) days after its removal, and upon payment to the town of all reasonable costs of removal and storage which shall have accrued to such vehicle or vehicles.

SECTION 8-408 SALE.

If no claim for the junk motor vehicle or vehicles is made within sixty (60) days after removal by the town, the vehicle or vehicles may be sold for the best price obtainable as junk or otherwise and the proceeds shall be used first to pay all reasonable removal or storage fees against the vehicle or vehicles.

SECTION 8-409 PENALTY.

Any person who violates any provision of this chapter, by doing any act prohibited or declared to be unlawful thereby, or declared to be an offense or misdemeanor thereby, is guilty of an offense and, upon conviction thereof, shall be punished as provided in Section 1-108 of this code. Each day upon which any such violation continues shall constitute a separate offense.

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CHAPTER 5

FOOD AND MILK REGULATIONS

ARTICLE A

FOOD SERVICE SANITATION

Section 8-501 Regulations adopted.

ARTICLE B

MILK AND MILK PRODUCTS

Section 8-520 Regulations adopted.

Section 8-521 Penalty.

ARTICLE A

FOOD SERVICE SANITATION

SECTION 8-501 REGULATIONS ADOPTED.

Title 310, Chapter 257 of the Oklahoma Administrative Code, titled "Food Establishments" effective as of September 11, 2016, as amended, as promulgated by the Oklahoma State Department of Health is hereby adopted and incorporated by reference in this code. At least one copy of the rules and regulations shall be on file in the office of the town clerk-treasurer. The rules and regulations shall govern except in case of conflict with the provisions of this chapter, in which case the more restrictive terms shall prevail.

ARTICLE B

MILK AND MILK PRODUCTS

SECTION 8-520 REGULATIONS ADOPTED.

A. The latest edition of the "Grade A Pasteurized Milk Ordinance" adopted by the United States Department of Health and Human Services and the provisions of state law governing milk and milk products as set out in Sections 7-401 through 7-421 of Title 2 of the Oklahoma Statutes, as amended from time to time, and known as the "Oklahoma Milk and Milk Products Act" are hereby adopted and incorporated by reference in this code and are enforceable by the town as fully as if they were set out at length herein. At least one copy of the milk ordinance and referenced state law shall be on file in the office of the town clerk-treasurer. The milk ordinance and the referenced

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state law shall govern except in case of conflict with the provisions of this chapter, in which case the more restrictive terms shall prevail.

B. Only Grade A pasteurized or Grade A raw milk and milk products shall be sold to the final consumer, and only Grade A pasteurized milk shall be sold through restaurants, soda fountains, grocery stores or similar establishments, including school lunch rooms and cafeterias. In an emergency, however, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the health authority, in which case, such milk and milk products shall be labeled "ungraded. "

SECTION 8-521 PENALTY.

Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Section 1-108 of this code. Such person may also be enjoined from continuing such violations. Each day upon which such a violation occurs shall constitute a separate violation.

CHAPTER 6

SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES

Section 8-601	Definitions.
Section 8-602	Possession of Lighted Tobacco in Certain Places Prohibited.
Section 8-603	Exemptions.
Section 8-604	Designated Smoking Rooms and Areas.
Section 8-605	Posting.
Section 8-606	Violation and Penalty.
Section 8-607	Enforcement.

SECTION 8-601 DEFINITIONS.

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

- (a) *Indoor workplace* means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed;
- (b) *Public place* means any enclosed indoor area where individuals other than employees are invited or permitted; the term is synonymous with the phrase any indoor place used by or open to the public;
- (c) *Restaurant* means any eating establishment regardless of seating capacity;
- (d) *Smoking* means the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device; and
- (e) *Stand-alone bar, stand-alone tavern, and cigar bar* mean an establishment that derives more than 60 percent of its gross receipts, subject to verification by competent authority, from the sale of alcoholic beverages and low-point beer and no person under 21 years of age is admitted, except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537

of Title 37 of the Oklahoma Statutes and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including a restaurant.

SECTION 8-602 POSSESSION OF LIGHTED TOBACCO IN CERTAIN PLACES PROHIBITED

- (a) The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, public transportation, or any indoor workplace, except where specifically allowed by law.
- (b) All buildings, or portions thereof, owned or operated by this State shall be designated as nonsmoking; provided, however, each building may have one designated smoking room. As used in this paragraph, "buildings" shall not include up to 25 percent of any hotel or motel rooms rented to guests if the rooms are properly ventilated so that smoke is not circulated to nonsmoking areas.
- (c) All buildings, or portions thereof, owned or operated by this city, shall be entirely nonsmoking.
- (d) No smoking shall be allowed within 25 feet of the entrance or exit of any building specified in Subsection (b) or (c) of this section.

SECTION 8-603 EXEMPTIONS.

The restrictions provided in Section 8-602 shall not apply to the following:

- (a) stand-alone bars, stand-alone taverns and cigar bars;
- (b) the room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;
- (c) up to 25 percent of the guest rooms at a hotel or other lodging establishment;
- (d) retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;
- (e) workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;

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- (f) workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;
- (g) private offices occupied exclusively by one or more smokers;
- (h) private residences and workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
- (i) medical research or treatment centers, if smoking is integral to the research or treatment;
- (j) a facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19) of the Internal Revenue Code, 26 U.S.C., Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and
- (k) any outdoor seating area of a restaurant; provided, smoking shall not be allowed within 15 feet of any exterior public doorway or any air intake of a restaurant.

SECTION 8-604 DESIGNATED SMOKING ROOMS AND AREAS.

- (a) An employer not otherwise restricted from doing so under this article may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted directly to the outside in such a manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within 15 feet of any entrance, exit or air intake.
- (b) If smoking is to be permitted in any space exempted in Section 8-603 of this article or in a smoking room pursuant to Subsection (a) of this section, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within 15 feet of any entrance, exit or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.

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- (d) A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking rooms for residents and their guests. Such rooms shall be fully enclosed, directly exhausted to the outside, and shall be under negative air pressure so that no smoke can escape when a door is opened and no air is recirculated to nonsmoking areas of the building.
- (d) Restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within 25 feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

SECTION 8-605 POSTING.

- (a) The person who owns or operates a place where smoking or tobacco use is prohibited by law shall be responsible for posting a sign or decal, at least four inches by two inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.
- (b) Responsibility for posting signs or decals shall be as follows:
 - (1) in privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible;
 - (2) in corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and
 - (3) in publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

SECTION 8-606 VIOLATION AND PENALTY

Any person who knowingly violates this article is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$10.00 nor more than one hundred dollars (\$100.00).

SECTION 8-607 ENFORCEMENT.

The State or local governmental agency or the person who owns or operates a public place shall, at a minimum, do the following in order to prevent smoking in public places:

- (a) post signs at entrances to places where smoking is prohibited which state that smoking is prohibited or that the indoor environment is free of tobacco smoke; and
- (b) ask smokers to refrain from smoking upon observation of anyone violating the provisions of this act.

CHAPTER 7

PREVENTION OF YOUTH ACCESS TO TOBACCO

Section 8-701	Definitions.
Section 8-702	Furnishing or Sale of Tobacco Products, Nicotine Products or Vapor Products to Persons Under Twenty-one (21) Years of Age.
Section 8-703	Possession of Tobacco Products, Nicotine Products or Vapor Products by Persons Under Twenty-one (21) Years of Age.
Section 8-704	Distribution of Tobacco Product Samples, Nicotine Product Samples or Vapor Product Samples.
Section 8-705	Sale of Tobacco Products Except in Original, Sealed Package.
Section 8-706	Public Access to Displayed Tobacco Products, Nicotine Products or Vapor Products.
Section 8-707	Report of Violations and Compliance Checks.

SECTION 8-701 DEFINITIONS

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

- (a) *Cigarette* means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and costs of or contains:
- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco,
 - (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filter, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph a of this paragraph.

The term “cigarette” includes “roll-your-own” (i.e. any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.) For purposes of this definition of cigarette, nine one-hundredths (0.09) of an ounce of “roll-your-own” tobacco shall constitute one individual “cigarette”.

- (b) *Nicotine product* means any product that contains nicotine extracted or isolated from plants, vegetables, fruit, herbs, weeds, genetically modified organic matter, or that is synthetic in origin and is intended for human consumption; provided, however, this term shall not include products

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approved by the United States Food and Drug Administration for smoking cessation.

- (c) *Person* means any individual, firm, fiduciary, partnership, corporation, trust, limited liability company, or association, however formed.
- (d) *Proof of Age* means a driver's license, license for identification only, or other generally accepted means of identification that describes the individual as twenty-one (21) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid.
- (e) *Sample* means a tobacco product, nicotine product, or vapor product distributed to members of the public at no cost for the purpose of promoting the product.
- (f) *Sampling* means the distribution of samples to members of the public in a public place.
- (g) *Tobacco product* means any product that contains tobacco and is intended for human consumption;
- (h) *Transaction scan* means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification; and
- (i) *Transaction scan device* means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification.
- (j) *Vapor product* shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

SECTION 8-702

FURNISHING OR SALE OF TOBACCO PRODUCTS,
NICOTINE PRODUCTS OR VAPOR PRODUCTS TO
PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE.

(a) It is unlawful for any person to sell, give, or furnish in any manner any tobacco product, nicotine product or vapor product to another person who is under twenty-one (21) years of age, or to purchase in any manner a tobacco product, nicotine product or vapor product on behalf of such person. It shall not be unlawful for an employee under twenty-one (21) years of to handle tobacco products, nicotine products or vapor products when required in the performance of the employee's duties.

(b) Any person engaged in the sale or distribution of tobacco products, nicotine products or vapor products shall demand proof of age from a prospective purchaser or recipient of an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under twenty-one (21) years of age. If an individual engaged in the sale or distribution of tobacco products, nicotine products or vapor products has demanded and was shown proof of age from a prospective purchaser or recipient who is not under twenty-one (21) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.

(c) Defenses: Proof that the Defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to prosecution under subsection (a) or (b) of this section. A person cited for violation of this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation, if such person proves that:

(1) The individual who purchased or received the tobacco product, nicotine product or vapor product presented a driver's license or other government-issued photo identification purporting to establish that such individual was twenty-one (21) years of age or older; and

(2) The person cited for the violation confirmed the validity of the driver's license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

(3) Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver's license or other government-issued photo identification was that of the person who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

(d) When a person is convicted or enters a plea and receives a sentence for a violation of subsections (a) or (b) of this section, the penalty/fine assessed shall not exceed the following:

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- (1) One Hundred Dollars (\$100.00) for the first offense;
- (2) Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense; and
- (3) Three Hundred Dollars (\$300.00) for the third or subsequent offense within a two-year period following the first offense.”

SECTION 8-703 POSSESSION OF TOBACCO PRODUCTS, NICOTINE PRODUCTS OR VAPOR PRODUCTS BY PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE.

(a) It is unlawful for any person who is under Twenty-one (21) years of age to purchase, receive, or have in his or her possession a tobacco product, nicotine product or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any tobacco product, nicotine product or vapor product. It shall not be unlawful for an employee under Twenty-one (21) years of age to handle tobacco products, nicotine products or vapor products when required in the performance of the employee’s duties.

(b) When a person convicted or enters a plea and receives a sentence for a violation of subsection (a) of this section, the penalty/fine assessed shall not exceed the following:

- (1) One Hundred Dollars (\$100.00) for the first offense; and
- (2) Two Hundred Dollars (\$200.00) for the second or subsequent offense within a one-year period following the first offense.

SECTION 8-704 DISTRIBUTION OF TOBACCO PRODUCT SAMPLES, NICOTINE PRODUCT SAMPLES OR VAPOR PRODUCT SAMPLES.

(a) It is unlawful for any person to distribute tobacco products, nicotine products, vapor products or product samples of the foregoing to any person under Twenty-one (21) years of age.

(b) No person shall distribute tobacco product samples, nicotine product samples or vapor product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under Twenty-one (21) years of age.

(c) When a person is convicted or enters a plea and receives a sentence for a violation of subsection (a) or (b) of this section, the penalty/fine assessed shall not exceed the following:

- (1) One Hundred Dollars (\$100.00) for the first offense; and
- (2) Two Hundred Dollars (\$200.00) for the second offense; and
- (3) Three Hundred Dollars (\$300.00) for the third or subsequent offense.

SECTION 8-705 SALE OF TOBACCO PRODUCTS EXCEPT IN ORIGINAL, SEALED PACKAGE.

- (a) It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.
- (b) When a person is convicted or enters a plea and receives a continued sentence for a violation of this section, the total of any fines, fees, or costs shall not exceed Two Hundred Dollars (\$200.00) for each offense.

SECTION 8-706 PUBLIC ACCESS TO DISPLAYED TOBACCO PRODUCTS, NICOTINE PRODUCTS OR VAPOR PRODUCTS.

- (a) It is unlawful for any person or retail store to display or offer for sale tobacco products, nicotine products or vapor products in any manner that allows public access to the tobacco products, nicotine products or vapor products without assistance from the person displaying the tobacco product, nicotine product or vapor product or an employee or owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under Twenty-one (21) years of age.
- (b) When a person is convicted or enters a plea and receives a sentence for violation of this section, the penalty/fine assessed shall not exceed Two Hundred Dollars (\$200.00) for each offense.

SECTION 8-707 REPORT OF VIOLATIONS AND COMPLIANCE CHECKS.

- (a) Any conviction for a violation of this Article and any compliance checks conducted by the Police Department pursuant to Subsection (b) of this section shall be reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of the conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission. Convictions shall be reported by the Court Clerk]or his designee and compliance checks shall be reported by the Chief of Police or his designee.
- (c) Persons under Twenty-one (21) years of age may be enlisted by the Sperry Police Department to assist in enforcement of this Chapter pursuant to the rules of the ABLE Commission.

CHAPTER 8

UNFIT DWELLINGS

Section 8-801 Designation of Unfit Dwellings and Procedure for Condemnation.

SECTION 8-801 DESIGNATION OF UNFIT DWELLINGS AND PROCEDURE FOR CONDEMNATION.

The designation of dwellings or dwelling units as unfit for human habitation and the procedure for the condemnation and placarding of such unfit dwellings shall be carried out in compliance with the following requirements:

A. Any dwelling or dwelling unit which, by its failure to comply with the requirements as set out in this chapter or other applicable provisions of Part 8 of the Code of Ordinances of the Town of Sperry, is found to be one or more of the following states or conditions, shall be condemned as unfit for human habitation:

1. One which is so damaged, destroyed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious and substantial hazard to the health, safety and welfare of the occupants of the dwelling or the public;
2. One which lacks an operable and working connection to a public water system and public sanitary system or an approved private sewage disposal system;
3. One which lacks a lavatory, water closet or kitchen sink in operable condition, with provision of both hot and cold water to the lavatory and kitchen sink;
4. One which lacks illumination, ventilation, or sanitation facilities adequate to protect the health or safety of the occupants or of the public; or
5. One which because of its general condition or location is unsanitary, or is otherwise a danger to the health, safety and welfare of the occupants or the public.

B. Whenever the health officer, code enforcement officer, building official, or fire marshal of the Town of Sperry determines that a building is unfit for human habitation as defined above, he or she shall:

1. Affix to such dwelling or portion thereof, upon the door or the entrance thereto, a placard on which shall be printed a declaration that such dwelling or portion thereof is unfit for human habitation and order such dwelling or portion thereof vacated; and

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2. Notify the owner, occupant, lessee and any other person having an interest in the dwelling as shown by the records of the County Clerk of the county where the dwelling is situated of any dwelling or building found by him or her to be unfit for human habitation and that: (a), the owner must vacate and repair or demolish the dwelling or building in accordance with the terms of the notice and this chapter; and (b) the occupant or lessee must vacate the dwelling or building, or with the consent of the owner, may have it repaired or the condition(s) otherwise abated in accordance with the requirements of the notice and order and remain in possession.

C. Any dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation must be vacated and shall not be again used for human habitation, unless and until written approval is secured from, and such placard is removed by the health officer, code enforcement officer, building official, or fire marshal. The health officer, code enforcement officer, building official, or fire marshal shall remove such placard whenever the defect, defects, conditions, deficiencies or violations upon which the condemnation and placarding were based have been remedied and eliminated.

D. No person shall deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except as provided in subsection C of this section.

E. Any person aggrieved or affected by any notice or order relating to the condemning or placarding of a dwelling or dwelling unit as unfit for human habitation may request an appeal to the Board of Trustees by filing written notice of such appeal with the Town Clerk within ten (10) days after the dwelling or dwelling unit has been placarded and written notice has been mailed to the owner, occupant, lessee and any other person having an interest in the dwelling as shown by the records of the County Clerk. Such written appeal shall specify the grounds for the appeal and shall be heard as soon as possible by the Board of Trustees.

F. An appeal to the Board of Trustees as set forth herein shall stay all further proceedings in furtherance of the notice and order relating to the condemning or placarding of a dwelling or dwelling unit as unfit for human habitation unless the health officer, code enforcement officer, building official, or fire marshal certifies to the Board of Trustees after a written appeal has been filed that by reason of facts stated by such official, that a stay would in his or her opinion cause imminent peril to life or property. In such case, the notice, order and determination of the health officer, code enforcement officer, building official, or fire marshal shall not be stayed except by a restraining order which may be granted by a court of competent jurisdiction for due and sufficient cause shown.

G. Upon such hearing, the Board of Trustees may reverse, annul or confirm, in whole or in part, the action taken with regard to the placarding of the dwelling or portion thereof and the determination and order of the health officer, code enforcement officer, building official, or fire marshal, and may take such other and further action as may be reasonable and necessary under the circumstances. All findings and decisions of

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the Board of Trustees at such appeal hearing shall be final and binding. Any person, firm, corporation or other entity who is aggrieved by the decision of the Board of Trustees with respect to such appeal may seek relief therefrom by filing suit in a court of competent jurisdiction within the period of time as prescribed by state law.