

Chapter 38 - HEALTH AND SANITATION¹¹

Footnotes:

--- (1) ---

Charter reference— Powers of town, § 2.

Cross reference— Animals, ch. 14; businesses, ch. 22; cemeteries, ch. 26; environment, ch. 30; fire prevention and protection, ch. 34; offenses and miscellaneous provisions, ch. 46; solid waste, ch. 58; utilities, ch. 78.

State Law reference— Certain local regulations pertaining to food and beverage containers prohibited, Code of Virginia, § 10.1-1425; state funds for drug enforcement, Code of Virginia, § 15.1-131.12; local ordinances regulating smoking, Code of Virginia, § 15.1-291.4 et seq.; municipal regulation of health, safety and general welfare, Code of Virginia, § 15.1-839; municipal regulation of beverages, foods and sanitation of food establishments, Code of Virginia, § 15.1-853; regulation of well covers, Code of Virginia, § 18.2-318; inspection warrant for inspecting or testing for toxic substances, Code of Virginia, § 19.2-393 et seq.; sanitation in transportation terminals, festivals, fairs, service stations, etc., Code of Virginia, § 32.1-202.

Sec. 38-1. - Maintenance of Properties Located inside Town Limits.

- (a) Notice to remove; removal by town, recovery of costs. The owners of property located within the town shall, upon receipt of 15 days' notice, in writing, remove therefrom any and all trash, rubbish, garbage, refuse, litter, junk and other substances which might endanger the health or safety of other residents of the town, or the town may, whenever the council deems it necessary, after reasonable notice, have such trash, rubbish, garbage, refuse, litter, junk and other like substances which might endanger the health of other residents of the town removed by its own agents or employees, in which case the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes and levies are collected or the town may place a lien the property until such expenses has been paid.
- (b) Maintenance of properties located inside the Town of Marion boundary. The owners/tenants of property located within the town, shall cut grass, weeds and other foreign growth on such property or any part thereof at such time or times as the governing body shall prescribe; or may, whenever the governing body deems it necessary, after reasonable notice as described in subsection (a) above, have such grass, weeds or other foreign growth cut by its agents or employees, in which event the cost and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected, or the town may place a lien the property until such expenses has been paid. The town council for the Town of Marion has deemed it necessary for the public health and safety that all grass, weeds and other foreign growth on such property or any part thereof shall at no time be allowed to grow to a length of 15 inches or greater. Vacant land used for the production of hay or other agricultural uses are exempted.
- (c) Any vacant lot that is located in a R-1 (Residential Zone 1) that has a structure on either side of said lot must be maintained so that, the appearance of the vacant lot conforms with the adjoining property or properties.
The lot must be maintained per article 38-1 (b), to the furthest point that the adjoining properties are maintained.
- (d) Any vacant lot that is located in a R-2 (Residential Zone 2), or R-3 (Residential Zone 3) that has a structure on both sides or said lot must be maintained so that, the appearance of the vacant

conforms with the adjoining property or properties.

The lot must be maintained (A) 75' from the front of the lot's parcel line or (B) to the furthest point that the adjoining properties are maintained, whichever distance is less.

The lot must be maintained per article 38-1.

- (e) Any vacant lot located in a MA (Medical Arts Zone), CD (Commercial Downtown Zone), CG (Commercial General Zone), CL (Commercial Limited Zone) and IG (Industrial General Zone) that adjoins a residential zone, that has a residential structure on either side of said lot must be maintained so that the appearance of the vacant lot conforms to the adjoining property or properties. The lot must be maintained per article 38-1 (b), to the furthest point that the adjoining properties are maintained, and 25' off side parcel line that adjoins any residential lot with a structure located upon.
- (f) Trees 10" in diameter or over are exempt from subparts (c) and (d).
- (g) Hedges, Shrubbery and Other plantings:
 - (1) Hedges, Shrubbery and other planting shall be well maintained and kept in a healthy condition and shall be kept trimmed and free from becoming a hazard or an obstruction to traffic, vehicular and/or pedestrian visibility.
 - (2) On corner lots, all hedges, shrubbery and other plantings (excluding trees) must not exceed three (3') feet in height, as described in Section 4.9 of the Town of Marion Zoning Ordinance, Fences and Obstructions to Vision.

Sec 38-2. - Accumulations on properties located inside Town Limits.

SECTION 1. General Provisions

A. DEFINITIONS. The following words or terms when used herein shall be deemed to have the meanings set forth below:

- 1. **JUNK** shall include, but not limited to, parts of machinery or motor vehicles, old tires, unused / broken items such as: furniture, stoves, refrigerators, or other appliances, remnants of wood/lumber, old pallets, metal, or any other castoff matter of any kind, whether or not the same could be put to any reasonable use.
- 2. **BLIGHTED STRUCTURE** shall include, but not limited to, any dwelling, mobile home, RV, campers, garage, or outbuilding, or any factory, shop, store, warehouse or any other structure or part of a structure which, because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.
- 3. **BUILDING MATERIALS** shall include, but not limited to, lumber, bricks, concrete, or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, cement nails, screws, or any other materials used in constructing any structure.
- 4. **PERSON** shall include all natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or unincorporated, whether acting by themselves or by a servant, agent, or employee. All persons who violate any of the provisions of this article, whether as owner, occupant, leasee, agent, servant, or employee shall, except as herein otherwise provided, be equally liable as principals.
- 5. **TRASH and RUBBISH** shall include, but not be limited to, any and all forms of debris not herein otherwise classified. Waste, empty cans, food containers, paper goods, bottles, crockery, utensils of any kind, boxes, cardboard, ripped or torn plastic sheeting and/or tarps, barrels, and all other articles customarily considered trash or junk.

6. Firewood Storage of Firewood: In addition, wood or wood products intended to be used as property owner's personal firewood in a residence or an accessory structure is allowed, provided any/all wood products are stacked neatly adjacent to the residence or other buildings therein, and said stack shall be either in the side yard, as defined by the front of the residential structure, or in the back yard. Natural trees that have fallen or have been caused to fall and has been cut for firewood must be kept in an organized fashion. Fallen or cut trees must then be split and stacked for fireplace use within fifteen (15) days of the event causing the tree to be on the ground.

7. Screen, Screened, or Screening. A method of visually shielding or obscuring rubbish, trash and/or junk as defined in this section, by permanent construction and maintenance of a solid fence, up to eight (8) foot high, or earth berms to lessen the visual impacts on surrounding properties and roads. Fences (including gates) shall be constructed of materials and colors that blend with the surrounding landscape and whose vertical surface is covered by a solid or opaque material through which no complete visual images can be seen. Plastic, cloth or any like material that will deteriorate over time is not permitted as screening material.

8. Junk vehicle or junk recreation vehicle. defined as a vehicle that is inoperable or missing parts so that it is not maintained for driving and which by virtue of its condition cannot be, or is not, restored to an operable condition within ninety (90) days from the date of the notice served. Vehicle or Vehicles which are stored within a completely enclosed building or screened per definition 7 above are exempt.

9. Junk mobile home. defined as a condition in which has one or more of the following issues exist:

- (a) A substantial danger or hazard to public health, safety, or welfare,
- (b) Unused by the owner, either as their primary residence or as rental stock for a period of more than 12 continuous months;
- (c) Vacant Mobile Homes may be used as storage with a special use permit attained from the Town of Marion
- (d) Is uninhabited because of deterioration or decay,
- (e) Any condition which constitutes a fire hazard,
- (f) Subjects adjoining property to danger or damage by storm, soil erosion, or rodent infestation,
- (g) Becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter.
- (h) Non Conforming structures cannot be replaced with similar structures

A. It is hereby determined that the storage or accumulation of trash, rubbish, junk, building materials, the non- maintenance of blighted structures, or allowing overgrowth, and un-stacked/uncut firewood, upon any private property within the Town of Marion, tends to result in blighted and deteriorated neighborhoods, resulting in the deterioration of values for adjoining properties; an increase in criminal activity; the spread of vermin and disease; and is contrary to the public peace, health, safety and general welfare of the community.

B. It shall be unlawful for any person to store, or permit the storage or accumulation of trash, rubbish, or junk on any private property in the Town of Marion except within a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in auto parts, dealer in secondhand goods where the land use has been zoned for this type of business and the property has adequate screening from adjoining properties as described by definition above in section 7 .

C. It shall be unlawful for any person to store or permit the storage or accumulation of unused building materials on any private property except in a completely enclosed building or except where such building materials are a part of the stock of a business located on said property or

except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the Smyth County Building Inspector's office, provided, however, it shall be unlawful to allow any trash, construction waste or discarded materials to accumulate in such a manner so as to create an unsanitary condition, become a harborage for insects, rodents or any other vermin including but not limited to snakes, or become a nuisance to adjacent properties due to blowing or scattering debris.

D. The Town Code Enforcement Officer, Town of Marion Police Chief, or the Town Manager may assign staff to remove, or cause to be removed, any junk, trash rubbish, from any unenclosed private property after being notified, in writing, by U.S. Postal Service Certified Mail, the owner and/or occupant of such property of its intention to do so at least fifteen days (15) days prior to such removal. Such notice shall be served personally upon the owner or occupant of the property, if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property. Such junk shall be removed to the landfill and disposed of in accordance with law. Such removal by the code enforcement officer and/or police department shall not excuse or relieve any person of the obligation imposed by this article to keep their property free from storage or accumulation of junk, trash, or rubbish nor format the penalties for violation thereof.

E. Any junk, trash, rubbish, removed from unenclosed private property, or coming into the possession of the Town of Marion enforcement officer and/or police department by abandonment on public property in the Town of Marion, and which is determined by the town council to be of no value other than as scrap metal, can be disposed of by the manner as to eliminate the unsightly accumulation of such worthless hulks, and the hazards to public health attendant thereto with the least practicable delay.

F. The cost of removal shall include, but is not limited to, equipment use, labor, benefits, administration fees and disposal fees. The Code Enforcement officer shall certify to the Town of Marion Council the description of the property on which the junk was abated, the date and method of removal, by report, photograph's and/or video with date stamped images and such other information as may be deemed necessary, and the Town of Marion Town Clerk shall bill the costs to the owner or owners of the property involved, and a lien shall be immediately be placed on such property until the cost is paid in full for removal of the junk, debris and rubbish.

G. Un-stacked/uncut firewood can be considered rubbish and unlawful on any property in the Town of Marion if found in any other condition other than that described by definition above in section 6.

Section 2: Complaints 2.1

Any person and/or staff member may file a complaint that a property in The Town of Marion is in violation of this Ordinance. Such complaint must be in writing and signed by the complainant and forwarded to the Code Enforcement Officer. The Town of Marion shall not be obligated to investigate anonymous complaints or complaints that are not filed in writing. The complaint shall be filed in the Town of Marion's Engineering Office, 138 West Main St. Marion, Va.

Section 3:

Notice of Violation. 3.1

In the event that rubbish, junk, trash or any other infractions listed above, accumulates on any lot or tract of land in the Town, or upon any alley or sidewalk adjacent to such lot or tract of land, and a complaint is filed in writing pursuant to Section 2 above, such complaint shall be forwarded to the Enforcement Officer, who will conduct an investigation of the site to determine if an unlawful

condition does exist. In the event that the Enforcement Officer determines that an unlawful condition does exist, a Notice of Violation shall be issued to the owner, and if the property is rental property, owner and tenant, requiring the owner/tenant to:

- (a) Remove any non-compliant issue within fifteen (15) days from the date of said Notice of violation, or
- (b) Request to appear before the Town of Marion's Town Council within said fifteen (15) days to show cause why such violation should not be enforced or enter into mitigation with Town Council as described in section 3.2 below.

3.2 Mitigation (Grace Period)

Should the owner desire to enter into an agreement to mitigate the accumulation of the rubbish, junk or any such non-compliant issue, such owner shall immediately notify the Enforcement Officer and the parties shall enter into negotiations towards a mitigation agreement. Mitigation includes, but is not limited to, a phased and/or timed removal plan and screening. No language in this code is to be construed as compelling the town to enter into such agreement if acceptable terms and conditions to the town are not met.

3.3 Issuance

Said Notice of Violation shall be deemed issued by placing the same in the U.S. mails, certified, return receipt requested, to the owner's last known address as indicated on the County's assessment roll. Service shall be complete upon mailing of the certified return receipt. In the event the certified letter is not signed for and returns to sender all efforts has been by the Town of Marion to contact the property owner and/or tenant and after fifteen (15) days have expired the Town can pursue enforcement with Town's resources to bring non-compliant properties compliant.

3.4 Compliance

In the event that the person to whom such order is issued fails or refuses to immediately comply therewith, the Council may, without prior notice to the owner, occupant or agent of the owner, the condition giving rise to the issuance of the emergency Order, and to assess and collect the whole cost thereof by placing an immediate lien on the entire property.

Section 4: Emergency Violation.

4.1

Whenever the Town Council deems necessary that an emergency exists which requires immediate action to protect the public health, safety and welfare, the Council may, without prior notice or hearing, issue an violation stating that such emergency exists and requiring that such action be taken as deemed necessary to meet the emergency. Notwithstanding any provision of this Ordinance to the contrary, such violation shall be effective immediately.

4.2

Any person to whom such emergency violation is issued shall comply therewith immediately, and it shall be unlawful to fail or refuse to so comply.

4.3

In the event that the person to whom such emergency violation is issued fails or refuses to immediately comply therewith, the Council may, without prior notice to the owner, occupant or agent of the owner, provide through Town forces, contract, or otherwise, to remove, correct or otherwise abate the condition giving rise to the issuance of the emergency violation, and to assess and collect the whole cost thereof by placing an immediate lien on the entire property.

**Section 5:
Enforcement.**

- 5.1** The above-prescribed sections of this Ordinance shall be administered and enforced by the Town of Marion's Enforcement Officer.
- 5.2** The Council hereby designates the Town's Attorney, or his/her designee, as the Town's legal representative in the enforcement of the provisions of this Ordinance in any court of applicable jurisdiction.

Unpaid charges under section constitute lien against property. Every charge authorized by this section with which the owner and lienholder of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in the 1950 Code of Virginia, as amended, §§ 58.1-3940 et seq. and 58.1-3965 et seq.

- (d) Violations of this section shall be subject to a civil penalty of \$50.00 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts, and being within 12 months of the first violation shall be subject to a civil penalty of \$200.00. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000.00 in a 12-month period.
- (e) The town council for the Town of Marion has provided that such violations shall be a Class 3 misdemeanor in the event three civil penalties have been previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

(Code 1960, § 8-1; Ord. of 9-8-09)

State Law reference— Authority for above section, Code of Virginia, § 15.1-11; Authority for the above section, Code of Virginia, § 15.2-901 (1950, as amended).

TO BE ADDED TO CURRENT TOWN ZONING

Fence and Fencing. Defined as a free-standing wall used for privacy, protection, containment and/or screening. Construction of all fences and walls must be of permanent type unless the fence is being used in a construction environment such as silt fencing.

(A) Materials for construction of permanent fences and walls along residential and commercial property lines shall be limited to the following: Wood of same type and style, Masonry, Brick, Plaster, Block, Slump Stone, River Rock, Wrought Iron, Composite Material, PVC, Aluminum, Chain Link or similar materials as determined by the Town of Marion Town Manager.

(B) Materials for construction of permanent fences and walls used for agricultural shall be limited to the following: Wood of same type and style, Masonry, Brick, Block, Slump Stone,

River Rock, Composite, PVC, Woven Wire, Stranded Barbed Wire, Decay Resistant Post, Energized Stranded Wire (Electric Fence).

(C) The fencing material and colors must blend with surrounding landscape.

(D) The fence location can not obstruct pedestrian or vehicular visibility.

(E) On any corner lot in a residential district, there shall be no building, fence, planting, or obstruction to vision more than three (3) feet higher than curb level with the area formed by a straight line connecting two points, one in each street line, fifty (50) feet distance from the intersection of the two street lines. Shrubbery or other planting within this area shall be kept neat and trimmed to keep this requirement.

(F) In any Residential District, no fence or wall more than three and one-half (3 ½) feet high may be erected between the setback building line and the street on which the lot faces. No fence or wall more than eight (8) feet high may be erected within any Residential District. Fences for recreational purposes (swimming pools, tennis courts, etc.) are exempt.

(G) Use of any type of sharpened wire, (razor wire, razor tape) other than barbed wire is prohibited. Fencing for State Facilities use are exempt.