

## **Memorandum**

**TO:** Rep. Jonathan C. Jordan and Sen. Andy Wells—Co-Chairs of the Joint Legislative Administrative Procedure Oversight Committee

Rep. James L. Boles, Jr., Rep. Ted Davis, Jr., and Sen Shirley B. Randleman--- Co-Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety

**FROM:** Bob Hornik (General Counsel for the Town of Stem) and Brady Herman

**DATE:** November 7, 2018

**RE: Response to the Requirements set forth in Section 3 of Session Law 2018-69 (House Bill 379) for the Town of Stem, N.C.**

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Attached is the response of the Town of Stem, North Carolina to the requirements set forth in Section 3 of Session Law 2018-69 for local governmental units. The attached document contains a list of all the Town's ordinances that create criminal offenses pursuant to G.S. 14-4(a), with brief descriptions of the prohibited conduct.

If you have any questions about this Memorandum, please contact either Bob Hornik by email at [Hornik@broughlawfirm.com](mailto:Hornik@broughlawfirm.com), or Brady Herman at [bherman@broughlawfirm.com](mailto:bherman@broughlawfirm.com), at The Brough Law Firm, tel: (919)-929-3905. Also, please acknowledge receipt of this Memorandum and its sufficiency in complying with Session Law 2018-69, Section 3.

## **Article 9—Solid Waste and Environmental Regulations**

**Section 9.2.1—Accumulation of Solid Waste:** Prohibits causing, suffering, or permitting solid wastes to accumulate or remain on one's premises under his or her control. Natural solid waste materials resulting from lawn or garden work, such as tree trimmings, grass, dirt, and stones may be allowed to accumulate and remain on the premises unless these materials become or threaten to become (1) a fire hazard, (2) a harboring place for rodents or other vermin, or (3) otherwise pose a danger to the public health and safety.

**Section 9.2.2—Dumping or Littering on Public or Private Property:** Prohibits placing, discarding, throwing, dropping or depositing any solid wastes on (1) any public street or sidewalk within the Town or any other property owned or operated by the Town or any public property; or (2) any private property without the consent of the owner, occupant, or lessee thereof.

**Section 9.2.3—Transportation of Solid Waste within the Town:** Prohibits transporting or causing to be transported any solid wastes on the public streets within the Town unless the solid wastes are so secured that there is no escape from the transporting vehicle.

**Section 9.2.4—Burning or Burying Solid Wastes:** Prohibits burning or causing to be burned any garbage or refuse for the purpose of disposal. Burn barrels are also strictly prohibited.

**Section 9.2.4.2—Discarding or Abandoning Iceboxes:** Prohibits any person, firm, or corporation to discard, abandon, leave, or allow to remain in any place any icebox, refrigerator, or other container, equipment, or device of any kind with an airtight interior storage area of more than one and one-half cubic feet, without first removing the door(s) from such icebox, refrigerator, or equipment.

**Section 9.2.6—Accumulation of Scrap Materials, Scrap Tires:** The following accumulations of scrap materials constitutes as a public nuisance and must be abated as set forth in the Town Code: (1) the accumulation of scrap materials with a volume greater than 100 cubic feet for a period of more than 21 days; (2) the accumulation of more than 12 scrap tires on residential premises if stored outside; and (3) all scrap tires on nonresidential premises if they are not stored within a structure, or within a container outside of a structure.

**Section 9.2.7—Noxious Growth:** Prohibits causing, suffering or permitting on premises under his or her control any growth of weeds, grass or other plants that becomes or threatens to become a fire hazard, a harboring place for rodents or other vermin, or otherwise poses a danger to the public health and safety.

**Section 9.2.8—Growth of Weeds, Grass, Shrubbery Restricted:** Prohibits allowing or permitting any shrubbery, grass, trees, weeds, or other forms of plant growth to grow, protrude, or project upon any public street, sidewalk, or public square within the Town; or to allow such plant growth to stand upon property, at or near any street intersection so that the same may obscure the view of pedestrians or vehicles entering into such street intersections.

**Section 9.2.8.1—Maximum Growth of Weeds Permitted:** Prohibits any owner, lessee, or occupant having control over any property lot situated within the Town to allow or maintain such lot grass and weeds to grow over eight (8) inches tall.

**Section 9.4.1—Removal of Abandoned and Junked Vehicles Authorized:** Upon notification to the register owner, the Town may have abandoned or junked motor vehicles within the Town removed in accordance with the provisions of this article.

**Section 9.4.6—Motor Vehicles Dangerous or Prejudicial to Public Health and Safety:** If a motor vehicle constitutes as a public nuisance or creates a situation that is dangerous or prejudicial to the public health

or safety, the Town has the authority to remove or abate such motor vehicle, regardless of whether it is located on private property with the consent of the owner, lessee, or occupant thereof.

Section 9.5.4.1—Illicit Discharges: Prohibits causing or allowing the discharge, emission, disposal, pouring, or pumping any liquid, solid, gas, or other prohibited substance, other than stormwater, directly or indirectly into any stormwater conveyance, the waters of the State, or upon the land in a manner and amount that the substances are likely to reach a storm water conveyance or the waters of the State. Prohibited substances include, but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, or litter.

Section 9.5.4.2—Illicit Connections: Prohibits connections to a stormwater conveyance or stormwater conveyance system that allows the discharge of non-stormwater substances. Prohibited connections include, but are not limited to floor drains, wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.

Section 9.7.1—Summary Abatement of Conditions Dangerous or Prejudicial to Public Health: If the Town Board concludes, after notice and hearing that any condition or situation prohibited by this article, or any other condition or situation is dangerous or prejudicial to the public health or safety, the Board may adopt an ordinance to remove, abate or remedy everything so found within the Town limits. The person allowing or causing such condition to exist on their property must pay the expense of the abatement action and, if not paid, the cost of abatement which shall be a lien upon the land or premises.

## **Article 10—Noise Ordinance**

Section 10.3—General Prohibitions: Prohibits willfully engaging in any activity on any premises or public areas within the Town, which activity produces, results in, or constitutes a noise disturbance on occupied neighboring premises or public area.

Section 10.5—Specific Prohibitions: Prohibits engaging in any of the listed enumerated activities so as to produce unreasonably loud and raucous noise and to cause a noise disturbance on neighboring premises: (1) operation of radios, televisions, or sound reproduction devices; (2) playing of any amplified or non-amplified musical instruments; (3) keeping of any animal or bird that frequently or for long periods of time makes noises that tend to annoy or disturb others; (4) operation of domestic power tools or repairing or testing of any motor vehicle; (5) operation of any motor vehicle with an improper muffler system and also causes the tires to squeal or screech unnecessarily; (6) operation of any vehicles, boats, go karts, mini bikes, or recreational vehicles or devices impowered by an internal combustion engine; (7) street vending or peddling; or (8) sounding of any automobile horn except as a warning or danger signal.

Section 10.5.1—Same Commercial Entertainment: Prohibits any commercial establishment to play, operate or cause to be played or operated, any amplified or non-amplified musical instrument or sound production device in a manner that causes a noise disturbance on any neighboring premises or public area. Under this section, a “noise disturbance” is presumed to exist where the sound or noise caused by the activity is plainly audible within any occupied structure or within any public area more than sixty-six (66) feet from the property line of the commercial establishment during the following days and times: (1) for structures located in residential zoning districts, this presumption is effective at all hours; or (2) for structures and public areas located in nonresidential zoning districts, this presumption is effective from 11:00 pm until 7:00 am, except that the beginning time for the presumption is 1:00 am on Saturday and Sunday.

## **Article 14—Regulation of Construction Dumpsters**

**Section 14.3—Location of Construction Dumpsters:** For single-family residential zones, prohibits any commercial or construction dumpster to be located within ten (10) feet of an abutting dwelling, unless the occupant of such dwelling agrees in writing. For multifamily, commercial and industrial zones, prohibits any temporary commercial or construction dumpster to be located within ten (10) feet of an abutting residential property or on a public street or alley unless a permit is obtained from the Town Zoning Department. If a permitted dumpster is placed on the public street or alley, the dumpster must be directly in front or on the side of the property utilizing the dumpster, however, the dumpster cannot be placed in the street more than eighteen (18) inches from the curb, cannot obstruct driveways of abutting properties, and cannot obstruct traffic. A dumpster must not be placed in or upon any public street if on-street parking for vehicles is not allowed at that location.

**Section 14.5—Single Family Residential Zones:** Requires a dumpster and any replacement dumpster to only be placed on a lot or parcel for a total of not more than: (1) fourteen (14) days in any six (6) month period if placed on the streets; or (2) thirty (3) days in any six (6) month period if placed elsewhere on the lot or parcel.

**Section 14.6—Multi-Family and Commercial:** Requires any dumpster or replacement dumpster placed in accordance with this ordinance and not in a public street to remain on the site for up to six (6) months. If placed upon a public street, any dumpster or replacement dumpster may only remain for not more than fourteen (14) days in any six (6) month period.

**Section 14.7—Industrial:** A dumpster or replacement dumpster under this ordinance may remain on the site as long as needed.

**Section 14.8—Sanitation:** Requires all dumpsters on or at the site to be kept free from debris and litter, any animals or vegetable waste material must be dumped and emptied within twenty-four (24) hours, and any dumpster producing or causing noxious, foul, or offensive odors must be immediately removed or cleaned to eliminate the odor. Any full dumpster must be removed from the property within two (2) days.

**Section 14.9—Usage:** A dumpster must only be used to contain and remove debris and material generated at the location where the dumpster is placed.

**Section 14.10—Identification:** requires the name and telephone number of the owner and/or company responsible for the dumpster to be displayed in a weatherproof manner on the dumpster.

**Section 14.11—Permit Required:** Requires a permit to be obtained from the Town Zoning Administrator for using a dumpster unless another party has been so designated by the Town Board. After paying the required fee, the permit must be displayed on the dumpster in a waterproof container. A separate permit is required for each individual dumpster and a new permit is required for each dumpster at the expiration date of the previous permit.

## **Town of Stem Zoning Ordinance**

**Section 3.15—Enforcement and Remedies:** Failure to comply with any provision of the Town Zoning Ordinance or the conditions of an approved permit at any time is in violation of this Ordinance, subject to the penalties and remedies of this Section. The Zoning Administrator must take appropriate action to abate a violation and ensure compliance with this Ordinance. Pursuant to G.S. 14-4, persons convicted of violating this Ordinance shall be guilty of a misdemeanor and subject to a fine not to exceed \$500.00.