

Title 4
PUBLIC NUISANCES

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4.04 Public Nuisances Generally

4.04.010 Policy

It is the policy of the Town to declare what is a nuisance and abate and adjoin the same and to impose penalties on persons who may create or continue nuisances or allow separate nuisances to exist. The provisions of this Chapter shall not be construed as an amendment or repeal of any of the offenses defined or referenced in this Chapter or of any other provisions of this Code. The remedies specified in this Chapter shall be in addition to all other remedies contained in this Code and as provided by law. In addition to prosecution in the municipal court for any violation of the provisions of this Code, an action to abate a public nuisance may be brought by the Town manager in the court except that, in accordance with 8.08.050 Public nuisances of Chapter 8.08 Offenses relating to Health of Title 8 Health and Safety, the Town manager may issue an order to abate offenses described in said Chapter, said order subject to appeal to the court as provided therein.

4.04.020 Definitions

A. The following are deemed to be public nuisances:

1. A thing, act, failure to act, occupation, or use of property which annoys, injures, or endangers the safety, health, comfort, or repose of any considerable number of persons; unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage a public place; or in any way renders any considerable number of persons insecure in life or use of property;
2. Any building, land, substance, or personal property, the use or condition of which presents a substantial danger or hazard to the physical health or safety of the public or which are so defective, unsightly, or in such disrepair that they substantially diminish the value of or are otherwise substantially detrimental to surrounding properties;
3. Any building, fence, structure, or wall, the condition of which presents a substantial danger or hazard to public health and safety; including any building which is dilapidated, uninhabited, abandoned, or unused by the owner because of deterioration, or decay, or has been damaged by fire, decay, or otherwise;
4. Any offensive or unwholesome business or establishment, or any business or establishment carried on in a manner dangerous to the public health, safety, or welfare;
5. All dangerous, unguarded, or unprotected machinery in any public place or so situated or operated on private property as to attract minors or the public;
6. Offenses described in Chapter 8.08 Offenses relating to Health of Title 8 Health and Safety and Section 9.16.100 Other offenses of Chapter 9.16 Offenses relating to Public Peace and Order of Title 9 Public Peace, Morals, and Welfare; 7. all buildings or alterations to buildings made, erected, or maintained in violation of any provisions of this Code or of any uniform codes adopted by reference in Chapter 13.04 Uniform Codes of Title 15 Buildings, Construction, or Housing,
8. Any building, land, property; or business, occupation; or activity, operation, or condition which, after being ordered abated, corrected, or discontinued by lawful order of the Town manager, continues to be conducted, or continues to exist in violation of any provisions of the Code or any regulations enacted thereby;
9. Fire hazards consisting of dead shrubs; dead trees; combustible refuse, waste, or liquids; or any vegetation growing on public or private property which by reason of its size, manner of growth, or location reasonably constitutes a fire hazard to a building, improvement, crop, or other property;

10. Exterior of commercial or multi-family buildings not maintained in a neat and orderly manner, for example, doors or windows cracked and broken, painted surfaces cracked, peeling, or deteriorated, and parking lots broken and with potholes,
 11. Any action or activity that endangers or may damage or destroy any Town utility structures, mains, pipelines, services, manholes, or other facilities, and
 12. Those offenses existing in the Town which are known to the common law of the land and the Colorado Revised Statutes as nuisances.
- B. "Action to abate a public nuisance" means any action brought in the municipal court or authorized by Chapter 4.08 Public Nuisances relating to Health to restrain, remove, terminate, prevent, abate, or perpetually enjoin a public nuisance.

4.04.030 Existence of public nuisance—Notice

The Town manager may find that a public nuisance exists either as a result of his own knowledge, information provided by other officers of the Town, or after investigation of a complaint brought by any person, such complaint including whenever possible the nature of a public nuisance, its location, the name and address of the person responsible for the public nuisance, and the name and address of the complainant. Upon finding that a public nuisance exists, the Town manager shall prepare and serve a notice to abate on the person conducting, causing or maintaining a business, occupation, operation, or activity constituting the public nuisance and/or on the owner of record of the property on which the public nuisance exists or from which it originates, with copies to, if known as a result of his finding, any manager, occupant, or possessor of said property.

4.04.040 Contents of notice

The notice shall:

1. State that if the public nuisance is not abated within seven (7) days an action may be brought in the municipal court to abate the public nuisance, except that this time may be extended by the Town manager if he determines that the person or owner is in good faith proceeding to abate the nuisance;
2. That any costs of abatement incurred by the Town and any court costs incurred may be assessed against the person and/or owner found by the court to have caused, allowed to be caused, or allowed to continue the public nuisance; and, if the public nuisance exists on or originates from any property, such costs may become a lien upon said property; and
3. Be in writing, signed by the Town manager and served upon said person and/or owner, either personally or by mailing by certified mail, return receipt requested, to the last known address of said person and/or owner, the address of the latter as shown on the property tax assessment records of the County.

4.04.050 Action to abate brought

When a public nuisance has not been voluntarily abated within the time specified in said notice or within any extension of time by the Town manager, the Town manager may bring an action in the court to have the public nuisance declared as such by the court and for the court to issue an order to abate the public nuisance by said owner and/or person, or authorizing the Town to abate the public nuisance, such abatement to be performed either by its employees or any person under contract to the Town. Said action shall be brought by the Town manager in the name of the people of the Town by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served upon said person and/or owner, hereinafter termed the respondent, as in civil cases in accordance with procedures established by the municipal court.

4.04.060 Notice of appearance--Failure to appear

A notice of appearance shall be served upon the respondent with the summons and complaint. The appearance date at which time the respondent may admit or deny the allegation shall be not less than fourteen (14) days from the date of service of the summons and complaint unless the court grants a continuance for good cause shown. Upon the date and at the time set for appearance, if the respondent has filed no response and fails to appear and if it is shown that proper service was made on the respondent at least fourteen (14) days prior to the appearance date, the court may enter a default and judgment against the non-appearing respondent and may grant such orders as requested by the Town.

4.04.070 Judgment of court

If the court in an action to abate a public nuisance issues an injunction to restrain, prevent, or otherwise abate the continuance or recurrence of a nuisance, the court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction and enforce the same, and the court may retain jurisdiction of the case for purposes of enforcing its order. If said person and/or owner refuses to comply or fails to take action satisfactory to the court to abate a public nuisance within a period of time determined by the court, the court may hold the said person and/or owner in contempt of court and assess penalties as provided in Section 1.04.050 General penalty designated of Chapter 1.04 General Provisions of Title 1 General Provisions. The court may treat each day on which said violation or disobedience continues or recurs as a separate offense. If an owner/person fails to appear as summoned or if the court determines that the nature of the public nuisance requires immediate abatement, the court may issue an order authorizing the Town to take action to abate the public nuisance. The court may also authorize the Town to take such action if an owner/person ordered to take action to abate a public nuisance fails to take such action within the time specified or the Town manager finds that the owner/person has failed satisfactorily to abate the public nuisance, and the court concurs, provided that the owner/person is given an opportunity to appear before the court to contest the finding of the Town manager. Actions to abate a public nuisance shall be heard by the court without a jury at all stages of the proceedings. Continuance of the trial of a public nuisance shall be granted as provided by Colorado Revised Statutes. The judgment of the court may be appealed to the County court.

4.04.080 Abatement costs--Assessment—Collection

Whenever any costs are incurred by the Town in taking action to abate a public nuisance in accordance with an order of the court, the owner/person shall be liable for court costs as determined by the court and any costs incurred by the Town, the latter including the actual costs of abatement plus ten percent (10%) for inspection and administration. The Town manager shall prepare and mail to the last known address of the owner/person a statement of such costs. If the owner/person fails to make payment within thirty days of such mailing, the Town may collect such costs, including interest at an annual rate of six percent (6%), in a civil action or assess such costs as a lien against property. If such costs are assessed against property, the Town manager, in accordance with Section 31-20-105 C.R.S., shall certify such assessment to the treasurer of the County, who shall place upon the tax list for the current or next tax year such assessment plus a penalty of ten percent (10%) thereon to defray the costs of collection, such assessment and penalty to be collected in the same manner as other taxes are collected.

4.08 Public Nuisances Relating to Health

4.08.010 Applicability—Notice

All offenses described in Chapter 8.08 Offenses relating to health of Title 8 Health and Safety shall be deemed public nuisances. If any person violates or fails to comply with the provisions of said Chapter 8.08, the Town manager may serve personally or by certified mail a written notice upon the owner or agent in charge of a property, ordering said owner or agent to take action to abate the public nuisance within a stated time after receipt of the notice. Said notice shall contain a statement that said owner or agent shall have the right to appeal said order to the municipal court within ten (10) days of the receipt of said notice, which court may uphold, modify, or void said order.

4.08.020 Abatement costs--Assessment--Collection

If the nuisance is not abated within the stated time, or the owner fails to appeal said order to the municipal court within the stated time, or the court in case of appeal upholds or modifies said order, the Town manager may proceed to abate the nuisance, as ordered, upheld, or modified, and assess the whole cost thereof, plus ten percent (10%) for inspection and administration, upon the property. The Town manager shall notify in writing the owner or agent of such property of such assessment, and the assessment shall be a lien until paid. If any such assessment is not paid within thirty (30) days from the receipt of said notice, the Town manager, in accordance with Section 31-20-105 C.R.S., shall certify such assessment to the treasurer of the County, plus interest at an annual rate of six percent (6%) from the date of the notice of such assessment, and such assessment plus the interest thereon shall be placed upon the tax list for the current or next tax year and shall be collected in the same manner as other taxes are collected, with a ten percent (10%) penalty attached to defray the costs of collection