

TOWN OF BUENA VISTA, COLORADO

ORDINANCE NO. 04

(SERIES OF 2019)

**AN ORDINANCE OF THE TOWN OF BUENA VISTA, COLORADO,
REPEALING AND REENACTING ARTICLES I, II, AND III OF
CHAPTER 7 OF THE BUENA VISTA MUNICIPAL CODE
CONCERNING NUISANCES AND LITTERING**

WHEREAS, the Board of Trustees desires to update its nuisance and littering regulations to better protect the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA, COLORADO:

Section 1. Articles I, II, and III of Chapter 7 of the Buena Vista Municipal Code are hereby repealed and reenacted to provide as follows:

ARTICLE I - Nuisances

Sec. 7-1. - Definitions.

Construction materials means any material typically associated with construction activity, including without limitation lumber, nails, screws, tools, plaster, drywall, concrete, bricks, cinderblocks, stones, wood, roofing material, wire or metal binding, piping, conduit, and similar material.

Junk means scrap brass, scrap copper, scrap iron, scrap lead, scrap tin, scrap zinc and all other scrap metals and alloys, bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, old or used machinery of any type, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, inoperable motor vehicles, used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition.

A *nuisance* means any of the following:

1. Any condition or activity that unreasonably annoys or interferes with the use or enjoyment of public or private property or which constitutes a health or safety hazard, including without limitation any condition or activity that could attract, harbor or conceal harmful vermin, rodents, or insects;
2. Anything declared or determined to be a nuisance in this Code, by the statutes or regulations of the State of Colorado, or under Colorado common law;

3. The placing, accumulation or storage of junk or refuse on any property except within a trash can or container which has a tight-fitting lid or within a totally enclosed building, or the placement of compostable refuse in a properly maintained composting container;
4. The emission of any noxious gases or vapors from any place within the town. "Noxious gases or vapors" means any gas or vapor that causes anyone encountering the same to suffer coughing, choking or watering of the eyes. Wood and coal smoke from the chimney of a private residence and cigarette, cigar and pipe smoking are expressly excluded from this definition as are the emissions from motor vehicles;
5. Permitting animal waste to be deposited on public property or on private property without the express permission of the private property owner, or the accumulation of animal waste on private property causing its odor to be discernible from adjacent properties. The owner, licensee or person claiming possession of the animal shall be strictly responsible for such offense;
6. Any unlawful pollution or contamination of any surface or subsurface waters in the town, of the air or of any water, substance or material intended for human consumption;
7. The conduct or maintenance of any business, occupation or activity prohibited by statute or this Code;
8. Any building, structure, place, land, premises or property, the condition of which presents a substantial danger or hazard to public health or safety. An unsafe building or structure includes, but is not limited to, one that is structurally unsound or a fire hazard;
9. Any building or structure that is abandoned, unoccupied, partially destroyed, open to the elements, animals, or persons, via broken or missing windows or doors or holes in the siding or roofing, or not fully constructed and not the subject of a valid building permit;
10. Contaminated wells or cisterns; or
11. Any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of a department or officer of the town or other governmental entity, continues to be conducted or continues to exist in violation of statute or ordinance or in violation of any regulation of the town, county, state, or other governmental entity with jurisdiction over the subject property.

Refuse means any grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, including, but not limited to, plaster, broken concrete, bricks, cinderblocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material; all trash of any kind or nature whatsoever; animal carcasses or parts, waste resulting from the handling, preparation, cooking and consumption of food or animal carcasses, and wastes from handling, storage and sale of produce, and any other materials commonly known as trash or refuse of any kind or character or by any means known.

Town Administrator means the Town Administrator or his or her designee.

Sec 7-2. - Committing of nuisance unlawful.

- (a) It shall be unlawful and a violation of this Chapter for any person:
 - (1) To create, operate, maintain, conduct or continue any nuisance as defined in this Chapter;
 - (2) To commit an act of nuisance or to create or suffer a condition of nuisance within the corporate limits of the town; or
 - (3) To interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by the town, pursuant to the provisions of this Chapter.
- (b) Any person who makes or causes any nuisance to exist shall be deemed the author of the nuisance. Moreover, any person who is an owner of or who has possession or control of any private building, structure, place, land, premises, or property whether he or she is the owner of the property or not, where any nuisance exists or is found, shall be deemed the author of the nuisance.
- (c) Each day during which any nuisance continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense.

Sec. 7-3. - Abatement of nuisances—administrative.

- (a) Purpose. This section provides an alternative method for abating a nuisance to a municipal court action. An administrative abatement pursuant to this Section is not a prerequisite for a municipal court action, nor shall it preclude the issuance of a summons and complaint prior to, concurrently with or subsequent to an administrative abatement action.
- (b) Notice of abatement. The Town Administrator, upon the discovery of any nuisance on private property in the Town, shall notify the owner or occupant of the property to remove and abate from the property the thing or things therein described as a nuisance within the time specified in the notice. If a nuisance is committed by an

occupant who is not the owner, and the Town intends to impose liability or a fine on the Owner, the Town Administrator shall notify the property owner and the tenant, pursuant to C.R.S. § 31-15-401(1)(c). No notice to abate shall be required for nuisances found on public property.

(1) There shall be no minimum notice period for the abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health.

(2) As to other nuisances, the reasonable time for abatement shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good faith attempt at compliance is being made.

(c) Contents of notice. The notice to abate issued pursuant to the provisions of this Section to the owner or occupant of property upon which a nuisance was discovered shall contain the following:

(1) The address and other description of the property upon which the nuisance was discovered;

(2) The name and address of the owner of the property upon which the nuisance was discovered as reflected in the county assessor records;

(3) The name and address of the occupant of the property upon which the nuisance was discovered, if known, and if different from the owner;

(4) A description of the thing or things or condition deemed to be a nuisance;

(5) The time in which the nuisance is to be removed or abated from the property;

(6) A statement advising the owner or occupant that he or she may protest the determination of the authorized inspector with respect to any matters stated in the notice, by filing a written protest pursuant to Section 7-4 below with the Municipal Court within the time allowed for the removal or abatement of the nuisance described;

(7) A statement that, if the owner or occupant fails to comply with directions contained in the written notice or file a written protest thereto in the time allowed, the Town will enter the property, abate the nuisance described therein and assess the costs thereof to the owner of the property;

(8) A statement that, if the Town abates the nuisance, it shall be entitled to recover its abatement costs, plus fifteen percent (15%) of the abatement cost for inspection, and any other additional administrative costs; and

(9) A statement that, the cost of abatement constitutes a lien on the property until paid.

(d) Service of notice. The written notice to abate shall be served by:

(1) Personally delivering a copy of the notice to the owner of the property described in the notice;

(2) Personally delivering a copy of the notice to the nonowner occupant or resident of the property described in the notice and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner as reflected in the county assessor records; or

(3) Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner of the property described in the notice as reflected in the county assessor records and by posting a copy of the notice in a conspicuous place at the unoccupied premises.

Service of the notice shall be deemed complete upon the date of personal delivery or three (3) business days after the date of mailing as required herein.

(e) Abatement action. When a nuisance has not been voluntarily abated within the time specified in the notice to abate, the Town may proceed to abate the nuisance from the property and collect the costs thereof.

(f) Costs of abatement. If the town abates the nuisance, it shall be entitled to recover its abatement costs, plus fifteen percent (15%) of the abatement cost for inspection, and any other additional administrative costs. These costs shall constitute an automatic lien on the property on which the abatement was performed until paid and shall have priority over all other liens, except general taxes and prior special assessments. The lien may be collected by any legal means, including certification to the County Treasurer for collection in the same manner as taxes.

Sec. 7-4. - Protest of notice of abatement.

The owner or occupant of any property subject to a notice of abatement, within the period of time set forth in the notice, may protest any matter stated in the notice by filing a written protest with the Town Clerk. The Town Clerk shall forward the protest to the Town Administrator. The Town Administrator shall forthwith schedule a hearing on the protest. During the pendency of the protest, the order to abate shall be stayed.

Sec. 7-5. - Municipal Court action.

At any time, the Town may bring an action in the Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner, agent or occupant, by the person who caused the nuisance, by the person who allowed the nuisance to be caused or to continue or by the Town.

ARTICLE II – Littering and Snow Removal

Sec. 7-10. – Definitions.

The terms “junk” and “refuse” shall have the same meanings as set forth in Section 7-1.

Sec. 7-11. – Littering.

It is unlawful to place, deposit or dump, or cause to be placed, deposited or dumped, any junk or refuse upon any public or private property without consent of the owner.

Sec. 7-12. - Vehicles causing litter.

It is unlawful for any person to drive or move any truck or other vehicle within the Town, unless such vehicle is loaded or covered to prevent any load, contents or junk, refuse or litter from being blown or deposited upon any street, alley or other public place.

Sec. 7-13. - Construction materials covered or secured.

(a) No person shall keep or store any construction materials unless such materials are covered, secured and protected to prevent such materials from being blown, scattered about or otherwise moved by wind, water or other natural causes.

(b) Construction materials must be stored out of sight of public rights-of-way and neighboring properties unless associated with construction activity on the subject property or stored on a properly licensed and zoned property by a construction material manufacturer, wholesaler or retailer. Construction materials not associated with construction activity on the subject property or permissible manufacturing, wholesale or retail activity shall be stored in a fully screened enclosure or a fully enclosed structure.

Sec. 7-14. - Snow or ice deposits.

(a) No person shall deposit or cause any snow or ice to be deposited on or against any fire hydrant or traffic signal control device or appurtenance; nor shall any person deposit or cause to be deposited accumulations of snow or ice upon or adjacent to any sidewalk, street or roadway, loading and unloading area of a public transportation system, or designated emergency access land, such as may retard or in any way interfere with the safe and orderly flow of pedestrian or vehicular traffic by obstructing the view of such traffic on intersecting streets or drives or by any other means, or in any way obstruct or impede street or roadway drainage.

(b) The owners or occupants of property abutting upon or adjacent to sidewalks within the corporate limits of the Town shall keep such sidewalks free and clear of snow and ice. In the event such owners or occupants fail to remove snow and ice from such sidewalks within twenty-four (24) hours after the accumulation of snow and ice thereon, the Town may have the sidewalks cleaned and cleared of snow and ice, and the cost thereof, including inspection and other incidental costs and an additional cost for administration not to exceed ten percent (10%), shall be assessed against the property in accordance with the assessment provisions hereinafter set forth.

Sec. 7-15. - Unlawful use of trash receptacle.

It shall be unlawful for any person to intentionally or knowingly deposit, or to cause to be deposited, any junk or refuse in a refuse container located on the property of another, or on public property, without the prior permission of the owner or person in lawful possession of such refuse container.

ARTICLE III

Reserved.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED this 14th day of May, 2019.

THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY DAYS FROM PUBLICATION.

TOWN OF BUENA VISTA, COLORADO

By: _____
Duff Lacy, Mayor

ATTEST:


Paula Barnett, Town Clerk

