

TOWN OF MOFFAT, COLORADO
ORDINANCE NO. 2-2011

AN ORDINANCE REGARDING NUISANCE CONTROL

WHEREAS, the Board of Trustees desires to update and revise the Town's nuisance regulations to establish what constitutes a nuisance, as well as clarify procedures for complaints, abatement, and remedies, as well as establish penalties for creating and maintaining nuisances; and

WHEREAS, the Board of Trustees has the authority to determine what constitutes a nuisance, and enact procedures to abate and control nuisances pursuant to the following Colorado Revised Statutes §§ 31-15-401, 31-15-501, 31-15-601, 31-15-701 and 16-13-310 *et seq.*;

WHEREAS, the Board of Trustees determines that nuisance control is essential and necessary for the protection of the health, welfare, and safety of the community, as well as property values in the Town of Moffat.

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

Section 1: DEFINITIONS: When used in this Ordinance the following words shall be interpreted as follows, unless the context indicates otherwise:

(A) **BUILDING:** any dwelling, office building, barn, store, warehouse, or structure of any kind, whether or not the building is permanently affixed to the ground upon which it is located, and any trailer, semi trailer, mobile home, or any other vehicle designed or used for occupancy by persons for any purpose.

(B) **PERSON:** any individual, partnership, corporation, association, or agent, servant, or employee of any individual, partnership, corporation, association or other type of organization.

Section 2: NUISANCE DEFINED; VIOLATION SUBJECT TO CONTEMPT:

(A) The following are deemed to be a public nuisance:

(1) 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 used for any purpose which is in violation of the provisions of the Ordinances of the Town of Moffat, or any State law.

(2) The conducting or maintaining of any business, occupation, operation, or activity in violation of the provisions of the Ordinances of the Town of Moffat.

(3) Any business, occupation, operation, activity, or any building, land, substance, or personal property the use or condition of which has been identified as a public nuisance in the Ordinances of the Town of Moffat, the Colorado Revised Statutes, or the common law.

(4) Any act, condition, substance, occupation or use of property which substantially meets the criteria of a nuisance as defined in this Ordinance may be so declared by the Board of Trustees, and nothing in Section 6 shall be construed to limit the power of the Town to make such declaration.

(B) Any person found guilty of violating any of the provisions of this Ordinance shall, upon conviction thereof, be punished by a fine or imprisonment or both, pursuant to Section 7 of this Ordinance. Each day that a violation of any of the provisions of this Ordinance continues to exist shall be deemed to be a separate and distinct violation.

(C) Whenever, in a criminal or non-criminal prosecution under this Code, the Municipal Court finds the existence of a nuisance, the Court is authorized to abate the nuisance and assess costs in pursuant to Section 5 of this Ordinance.

(D) Any violation of any injunction or order issued by the Municipal Court in an action to abate a public nuisance may be punished as a contempt of court or by a fine as specified in Section 7 of this Ordinance. Unless the violation by its nature cannot be corrected, each day's failure to comply with an injunction or order to abate shall constitute a separate violation, for which an additional penalty may be imposed.

Section 3: COMPLAINT OF NUISANCE, RIGHT OF ENTRY IN EMERGENCY:

(A) A person may make a complaint of the existence of a public nuisance to the Mayor or any member of the Board of Trustees, the Town Clerk, Code Enforcement Officer, or another person designated by the Board of Trustees. Such complaint shall be in writing and include, whenever possible, the nature of the public nuisance, the location, including the address, the name of the owner, occupant, or manager of the property, the duration of the nuisance and the name and address of the complainant. Complaints that are not an emergency shall be referred to the Board of Trustees, and the Board of Trustees may direct its employees, officers or other contracted individuals to take further action in accordance with Section 4(B).

(B) Whenever the Mayor, or any two Trustees, have reason to believe that a public nuisance exists, and that such public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the Mayor, or any two Trustees, or their authorized representative, or any peace officer, may immediately enter into any building or upon any premises within the jurisdiction of the Town of Moffat for purposes of inspection or abatement.

Section 4: SUMMARY ABATEMENT; NOTICE TO ABATE; ACTION TO ABATE A PUBLIC NUISANCE:

(A) Whenever a public nuisance exists which constitutes an emergency presenting imminent danger of serious injury to persons or property, the Mayor, or his or her authorized representative, may order without notice or judicial action that the public nuisance be summarily abated by removal, destruction or mitigation. The cost of abatement shall be paid by the owner of the property upon which the nuisance existed, pursuant to the procedures established in Section 5(B).

(B) Unless a specific provision of this Ordinance states otherwise, when a public nuisance does not require summary abatement, the Town Clerk or another individual authorized by the Board of Trustees, including the Town Attorney, at the direction of the Board of Trustees may prepare and serve a notice to abate on the owner, manager, occupant or possessor of any property which constitutes the public nuisance or the person conducting or maintaining the business, occupation, operation, or activity which constitutes the public nuisance. Such notice shall:

(1) State that if the nuisance is not abated within seven (7) days that the Town may abate the nuisance or cause it to be abated and charge the cost of such abatement to the owner in accordance with this Ordinance with a notice issued as provided in subparagraph 2. Or alternatively provide the same notice that an action may be brought in the Municipal Court to abate the nuisance and that the costs of abatement, plus ten percent (10%) of such costs for inspection, and other additional administrative costs, including attorney's fees may be assessed against the person found by the Court to have caused, allowed to be caused or allowed to continue the public nuisance, and such costs may become a lien upon any property on which the abatement was performed.

(2) The notice shall be in writing, signed by the official issuing the notice, and be served, either personally or by means of posting on the premises upon which the nuisance exists. If notice is served by posting, a copy of the notice shall also be mailed by certified mail, return receipt requested, to the owner of record of the property at his last known address.

(C) When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply:

(1) The Board of Trustees may abate the nuisance or cause it to be abated and charge the cost of such abatement to the owner in accordance with this Ordinance, after notice the property owner that the Board of Trustees is considering this procedure which may result in the costs of abatement being certified to the County Treasurer as a lien on the real property as provided in Section 5.

(a) The notice shall inform the property owner of the date and time that the Board of Trustees will consider this action, as well as specifically inform the property owner that the costs of abatement may be certified to the

County Treasurer as a lien on the real property. The notice in this section is in addition to the notice in Section 4(B).

(b) The determination of the Board of Trustees may be appealed to the district court within 30 days after the Board of Trustees makes its decision.

(2) 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 or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue, or an administrative officer, his or her authorized representative, a peace officer, Code Enforcement Officer, or any person under contract with the Town to perform such services.

(a) The action to declare and abate a public nuisance shall be brought by the Town 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 as in civil cases, and any employee of the Town of Moffat, who is over the age of eighteen (18), may serve the summons and verified complaint upon the respondent. Trial shall be to the Court.

(b) A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than twenty-one days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the Court grants a continuance for good cause shown.

(c) The respondent shall file a response on or before the appearance date set forth in the notice of appearance.

(d) Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear and if the Town proves that proper service was made on the respondent at least twenty-one days prior to the appearance date, the Court may grant such orders as are requested by the Town; except that, the Court shall order that enforcement by the Town be stayed for ten days and that a copy of the Court's order be mailed to the respondent at his last known address. Failure to appear on any other date set for trial shall be grounds for entering a default and judgment thereon against a non-appearing party. For good cause shown, and prior to enforcement, the Court may set aside an entry of default and the judgment entered thereon.

(e) The judgment of the municipal court may be appealed to the district court.

(D) The remedies specified in this Section shall be in addition to all other remedies provided by law.

Section 5: ASSESSMENT AND COLLECTION OF COSTS OF ABATEMENT:

(A) A person found by the court, or determined by the Board of Trustees in accordance with Section 4(C), to have caused a public nuisance, or allowed the nuisance to be caused or to continue shall be liable for the costs specified in section 5(B). Such costs may be collected by the Town in a civil action or assessed and filed as a lien against any property on which the abatement was performed as specified in this Section.

(B) If the costs of abatement have not been otherwise collected, the Town Clerk shall prepare a statement enumerating the actual costs of abatement and collection plus ten percent (10%) of the abatement costs for inspection and other administrative costs. The costs enumerated in this statement shall be a first and prior lien upon the property relating back to the date upon which the abatement was performed.

A copy of this statement shall be deposited in the United States mail or personally hand delivered to the owner. The owner may request a hearing before the Board of Trustees to contest the amount of the costs. Such request must be made in writing and be filed with the Town Clerk within thirty days of the date of mailing or service of the first statement to the owner. The owner shall be given at least two weeks written notice of the date, time and place of any hearing scheduled before the Board of Trustees. The decision of the Board of Trustees shall be final. If the statement remains unpaid, the amount shall be certified by the Town Clerk to the County Treasurer of Saguache County.

Section 6: SPECIFIC NUISANCES DECLARED: It shall be unlawful for any person to cause, maintain or permit a public nuisance. Public nuisance shall include, but shall not be limited to, the following acts or conditions:

(A) Fire hazards: Dry or dead shrubs, dead trees, combustible refuse, waste, and liquids, or any material growing on a street, sidewalk or upon private property within the Town, which by reason of its size, manner of growth and location constitutes a fire hazard to a building, improvement, crop or other property, or when dry, will in reasonable probability constitute a fire hazard.

(B) Hazardous obstructions: An obstacle, landscaping, or thing installed or maintained in the sight triangle reaching a height higher than thirty (30) inches above the adjoining top of the curb at the applicable corner of the street intersection, or thirty (30) inches above the nearest pavement surface where there is no curb, or the existing traveled roadway at the corner in question where there is no curb or pavement. The sight triangle is that area adjacent to street intersections required to be free of visual obstructions. Sight triangle is defined as a line 25 feet back from the corner of both the front and side property lines. These two points are connected by a diagonal line.

Hazardous obstructions do not include existing or future permanent buildings otherwise constructed or maintained in accordance with applicable zoning and building regulations, public utility poles, and trees trimmed at the trunk at least eight (8) feet

above the level of the ground surface, provided that such trees are spaced so that trunks do not obstruct the vision of motorists.

(C) Polluted water: A swimming pool, pond or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted, or any standing or flowing water from a septic tank, cesspool, or sewer service line. For purposes of this Section "polluted water" means water contained in a swimming pool, pond, or other body of water, which contains one or more of the following: bacterial growth, including algae; remains of insects; remains of deceased animals; reptiles; rubbish; feces; refuse; debris; papers; and any other foreign matter or material which because of its nature or location constitutes an unhealthy, unsafe or unsightly condition.

(D) Public burning: The intentional outdoor burning of trash and/or rubbish. The burning of vegetation, brush, weeds, and other such natural materials shall not constitute a nuisance as long, as proper notification is given to the Sheriff's Office.

(E) Maintenance of property: Owning, leasing, occupying, managing or having possession of any premises in this Town in such manner that any of the following conditions are found to exist thereon:

(1) The premises are a detriment to public health, safety or general welfare.

(2) The premises are so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties.

(3) The premises are abandoned, boarded up, partially destroyed, or left unreasonably in a state of partial construction.

(4) Buildings have dry rot, warping, or termite infestation.

(F) Parking a vehicle on the front yard or side yard adjacent to the street of a residential property.

(G) Vehicles Containing Trash or Junk: A truck or other vehicle which contains trash or junk in the bed or open trunk of the truck or other vehicle, parked on any street or public right-of-way, unless such junk or trash is completely and securely covered.

(H) Inoperable Vehicles: Any inoperable vehicle, which means any automobile, truck, or self-propelled vehicle incapable of moving under its own power or which lacks a valid current license plate or does not comply with the minimum safety requirements of Colorado Motor Vehicle Law.

(I) Barking, yelping, howling or mewing by dogs or cats: Any dog or cat which, by loud or frequent or habitual barking, yelping, howling or mewing causes serious annoyance to the Town, neighbors, or to persons passing to and fro upon the streets or sidewalks.

(J) Accumulation of Manure: The accumulation of manure or other animal waste in quantities which causes complaints from neighbors.

(K) Fences in disrepair: Any fence which comes into disrepair or is not maintained.

(L) Unused Appliances: Any unused, inoperable or abandoned refrigerator, washer, dryer, freezer or other appliance with any accessible yard, lot or carport within the Town.

(M) Weeds: Any weeds growing on any property in Town, including streets or alleys adjacent to any private property in Town. Weeds are any plant material deemed a nuisance by virtue of species, location or perfusion, or listed the Colorado State University Cooperative Extension's Noxious Weed list.

(N) Abandoned Mobile Homes: Any abandoned or unsafe mobile home on any property in Town. Abandoned or unsafe mobile homes include but are not limited to mobile homes that uninhabitable, lack electricity, lack proper septic service, lack water, do not meet HUD regulations, or are otherwise a health hazard.

(O) Hazardous Material: Any accumulation of hazardous materials on private property located in Town, or any alley or street adjacent to any private property in Town. Hazardous materials include but are not limited to, tires, toxic or noxious chemicals, building materials, insulation, or any other material listed as hazardous or toxic by state or federal laws or regulations.

Section 7: PENALTY: Any person convicted in Municipal Court of any violation of this Ordinance shall immediately correct the violation and may be imprisoned in county jail or a fine not to exceed three hundred dollars (\$300.00). Each day upon which any violation shall continue shall constitute a separate offense.

Section 8: SEVERABILITY: If any portion of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 9. REPEALER AND CONFLICT: Chapter 8 of the Town of Moffat Code and the Blight Ordinance (Blight 8.2) are hereby repealed. All ordinances or resolutions inconsistent with this Ordinance are hereby superseded by this Ordinance.

THIS ORDINANCE IS DEEMED NECESSARY FOR THE PROTECTION OF THE HEALTH, WELFARE, AND SAFETY OF THE COMMUNITY AND SHALL BE EFFECTIVE IMMEDIATELY ON ITS PASSAGE.

FIRST INTRODUCED, and READ on this 7 day of Nov., 2011.

APPROVED and ADOPTED on this 6 day of Dec., 2011.

TOWN OF MOFFAT, COLORADO


Earl LeRoy, Mayor

ATTEST:



Debbie Canada, Town Clerk

CERTIFICATION

I hereby certify that the above Ordinance was first introduced, and read on 11-7, 2011, and approved and adopted at the regular meeting of the Board of Trustees of the Town of Moffat, Colorado on the 6 day of Dec., 2011 and posted at the following locations in the Town of Moffat:

- 1) moffat Post office
- 2) Community Center / New Town Hall
- 3) Saguache Credit Union


Debbie Canada, Town Clerk