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CHAPTER 10: NUISANCES

ARTICLE I. IN GENERAL

Secs. 10.1-10.25. Reserved.

ARTICLE II. PUBLIC NUISANCES

A. General Nuisances

Sec. 10.26 Definition.

For the purposes of this article, the term “public nuisance” shall mean a substance, act, occupation, condition or use of property, which is of such nature and continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way.
- (4) Offend the public decency.

B. Specific Nuisances

Sec. 10.27 Stagnant water, contaminated or impure well or cistern.

- (1) Ditches, sloughs, and man-made water holding devices containing stagnant water, which may provide a breeding ground for mosquitoes and other insects, are deemed a nuisance.
- (2) Excavations exceeding five (5) feet in depth, cisterns and wells or an excavation use for storage of water are declared to be a public nuisance unless the same are adequately covered with a locked lid or other covering device weighing at least sixty (60) pounds or are securely fenced with a solid fence to a height of at least six (6) feet.
- (3) Any well or cistern on any property within the limits of the City, whenever a chemical analysis or other proper test at the location of the same shows that the water of the well or cistern is probably contaminated, impure or unwholesome, is deemed a nuisance.
- (4) Every owner, tenant, occupant, lessee or other person in possession of any premises or any part thereof, upon which there is located a well containing contaminated, impure or unwholesome water, must abandon the use of the same, and cause the same to be filled with earth or such other material as may be designated by the City Manager or Chief of Police.

Sec. 10.28 Scattering Debris.

Dumping, throwing or placing any rubbish, cans, boxes, debris, grass clippings or other waste materials on any public place in the City is a nuisance and is prohibited.

Sec. 10.29 Accumulation or storage of rubbish, weeds, etc.

It is unlawful and constitutes a nuisance for any person to pile, store or allow to accumulate any rubbish, trash, garbage, weeds, manure or animal feces on any lot or real estate within the City in such quantities which could harbor and conceal harmful vermin, rodents or insects, or which is unsafe, unhealthy or unsightly to persons or public.

Sec. 10.30 Transporting garbage/trash in open vehicles.

Transporting of garbage, manure, swill, trash, leaves, grass or tree limbs upon any street in this City in a vehicle, which is not fitted with a substantially tightly enclosed cover thereon so as to prevent any portion of such refuse to be scattered or thrown into such street, is hereby declared to be a nuisance.

Sec. 10.31 Creating smoke or odors.

It is unlawful and constitutes a nuisance for any person to create smoke or odors from the burning of trash, leaves, weeds, refuse or other material, which creates an annoyance to others.

Sec. 10.32 Violations of building code and municipal zoning ordinance.

It is unlawful and constitutes a public nuisance for any person to maintain any property or building or any other structure in the City in a condition which is in violation of the building code or the zoning ordinance of the City.

Sec. 10.33 Exposure or conveyance of anything prejudicial to health.

It is unlawful and constitutes a nuisance for any person to expose, convey, place or cause to be exposed, conveyed or placed in any street or public place any substance, animal or thing to the prejudice of the public health.

Sec. 10.34 Accumulation of excessive firewood.

Accumulation of an excessive amount of firewood or kindling at or upon a lot or residence in such a manner as to cause a fire hazard or unsightly annoyance to others is deemed a nuisance. Such firewood shall not be stored on public rights-of-way.

Sec. 10.35 Offensive Businesses.

It shall be unlawful for any person to allow or suffer upon his premises or to conduct upon any premises or property within the City or within one (1) mile beyond the outer limits of the City, any slaughterhouse or other place for slaughtering animals, or any offensive or unwholesome business or establishment which is

detrimental to the public health, morals, safety or welfare, and the same is declared a nuisance. “Offensive or unwholesome business or establishment” means any business or establishment involving the provision of goods or services to others which creates, fosters or maintains any hazard to public health, morals, safety or welfare.

Sec. 10.36 Discharge of noxious or hazardous liquids.

The discharge out of or from any house or place of foul or noxious liquid or substance of any kind whatsoever into or upon any adjacent ground or lot or into any street, alley or public place in the City is hereby declared a nuisance. The discharge of any flammable or hazardous liquid or substance onto any lot, residence, building or other property in the City in such a manner as to constitute a hazard or danger to persons or property is also hereby declared a nuisance.

Sec. 10.37 Stale matter.

The accumulation of any stale, putrid or stinking fat or grease or other noxious matter on any property in the City is hereby declared to be a nuisance.

Sec. 10.38 Sewer inlet.

Any article or materials accumulated in any sewer, sewer line, inlet, system or privy vault that shall have a sewer connection, which causes or might cause such sewer line, sewer system, inlet or privy vault to become noxious or offensive to others or injurious to public health, are hereby declared to be nuisances.

Sec. 10.39 Dead animals; removal.

The body of any animal which has died and which is undisposed of after twelve (12) hours after death is hereby declared to be a nuisance. It shall be the responsibility of every owner, lessee and/or person in possession of such property to promptly dispose of said animal. Any person placing said animal on a City right-of-way or other City property shall be considered to have violated this Section.

Sec. 10.40 Loud and obnoxious noises.

- (1) The operation of a speaker device or vehicle audio system in, upon, or from any vehicle, upon any street, alley or sidewalk of the City or from any residence, business or other property which has the effect of an unreasonable and offensive annoyance, is hereby declared a public nuisance.
- (2) The use of Jake Brakes or any other similarly designated auxiliary engine braking system upon cars, trucks and other motor vehicles, unnecessary to the safe operation of said vehicles within the City, is hereby prohibited and is deemed a nuisance.
- (3) Barking Dog: It is unlawful for any owner or keeper of any dog to permit the dog, by loud and persistent or habitual barking, to disturb any person or neighborhood and the same is declared to be a public nuisance.

Sec. 10.41 Handbills, posters and placards.

Any sign handbill, poster, placard or painted or printed matter which shall be stuck, posted or pasted upon any public right-of-way or upon any public or private house, store or other building without the permission of the owner, agent or occupant of the house or the structure or right-of-way or upon any fence, power pole, telephone pole, tree or other structure, without the permission of the owner, shall be deemed a nuisance. Any such permitted signs, handbills, posters, placard, or painted or printed matters shall be removed within three days after expiration of the advertised event by any person placing or responsible for placing same.

Sec. 10.42 Snow and tree debris removal required.

It is the duty of the owner, tenant or occupant of any lot, block or parcels of land, or any part thereof, situated within the City to clean the snow or tree debris off the sidewalk abutting thereon within 24 hours after the fall of such snow or other tree debris. Such snow or tree debris accumulation is declared to be a nuisance and whoever is owning, renting or occupying any such premises and fails or neglects to clean the snow or tree debris from the sidewalk is guilty of a violation of this Section.

Sec. 10.43 Junk:

- (1) **Definition.** For the purposes of this article, the word “junk” shall mean any old, used or secondhand materials of any kind, including, without limitations, cloth, rags, clothing, furniture, refrigerators or freezers, used motor vehicles, or the parts thereof or therefrom; machines, apparatuses and contrivances, and parts thereof, which are no longer in use; any used building material, boards or other lumber; cement blocks, bricks or brickbats, or other second hand building material; or any discarded machinery, tractors, trucks or automobiles; or any other article or thing commonly known and classified as junk.
- (2) **Nuisance declared.** The keeping, storage or collection of junk within the City in violation of this Article is a nuisance and is detrimental to the health, safety, convenience and general welfare of the citizens thereof, and is a violation of this Article.
- (3) **Junkyards and dumping grounds.** All places used or maintained as junkyards or dumping grounds or for the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind or for the storing or leaving of worn out, wrecked or abandoned automobiles, trucks, tractors, trailers, boats and house trailers, appliances or machinery of any kind, or of any parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places essentially interfere with the comfortable enjoyment of life or property by others, or are unsightly, are hereby declared to be nuisances.
- (4) The keeping, storage or collection of junk shall not be deemed a nuisance when and if the same is kept, stored or collected in completely enclosed buildings. This Article shall not apply to any properly zoned premises where a licensed motor vehicle dealer or a farm implement dealer conducts his business.

Sec. 10.44 Weeds and wild growth:

- (1) ***Declared nuisance.*** Permitting the growth or decay of chico, sagebrush, greasewood, thistles, weeds or other waste vegetation within the City is a nuisance.
- (2) ***Permitting to grow or remain declared nuisance.*** Every person being the owner, occupant, tenant or in control of any lot or parcel of land within the City, who permits or allows the growth, decay or presence of chico, sagebrush, greasewood, thistles, weeds or other waste vegetation in excess of eight inches in height on any premises, or in the alleys, sidewalk and parking areas appurtenant to the property, is guilty of creating, continuing and suffering a nuisance to exist. Property owners, lessees and persons in possession of any property in the City shall be responsible for maintaining their property (and any adjacent property of the City which may be appurtenant to the rear, front and side of such property, including to the center of alleyways, front and side islands and other property to the curb line of the street) in compliance with this Section and including the trimming of trees, hedges, and shrubbery in conformity with the provisions of Article III, Chapter 14 of the Monte Vista Municipal Code.
- (3) ***Abatement notice, cost, lien.*** The passage and publication of this article shall constitute due and proper notice to all owners, tenants and occupants of real property within the City to abate the nuisance, and to remove and keep removed all weeds and other noxious growth. If any person permits any nuisance to exist, the City Manager may cause the nuisance to be abated by removing the weeds, thistles, greasewood, sagebrush, chico or other waste vegetation and assess costs and charges as provided in Article III of this Chapter.

Sec. 10.45 Parking vehicles, motorized equipment, and machinery on lawns.

The parking of vehicles, motorcycles, ATV's, snowmobiles, boats, motorized equipment and machinery upon front and side yards abutting or in view of City streets or in public rights-of-way between street, curb and owner's property line contributes to the depreciation of property values, constitutes blight and, is prohibited; the same is hereby deemed a nuisance. Nothing in this Section is intended to prohibit the parking of vehicles on paved or constructed driveways adjacent to residences.

Sec. 10.46 Abandoned, wrecked and junked vehicles

- (1) ***Abandonment prohibited.*** No person shall abandon any vehicle within the City, and no person shall leave any vehicle at any place within the City for such times and under such circumstances as to cause the vehicle reasonably to appear to be abandoned.
- (2) Whenever any Police Officer or ordinance enforcement officer finds a vehicle, unattended, standing upon any portion of a street or highway right-of-way within the City or left unattended for a period of 24 hours or more and presumed to be abandoned under the conditions prescribed by C.R.S. § 42-4-1801 et seq., such officer shall require the vehicle to be removed or cause the vehicle to be removed and placed in storage in the nearest garage or other place of safety designated or maintained by the City. Vehicles removed from streets or highways and other property within the City and placed in storage, as provided in this Section, shall be disposed of in accordance with the provisions of such statute.

- (3) In the event of abandonment of a vehicle on property within the City other than public rights of-way, the owner of the property shall notify the City Police Department and the department shall, after a period of 72 hours, likewise cause the abandoned vehicle to be removed and placed in storage in the nearest garage or other place of safety designated or maintained by the City.
- (4) ***Wrecked vehicles on street.*** No person shall leave any wrecked, discarded, junked or partially dismantled vehicle on any street or highway within the City.
- (5) ***Expired motor vehicle certificate deemed violation.*** The keeping or storage of any motor vehicle not having thereon a valid and unexpired license plate (determined by examining such plates on the exterior of the vehicle) on private property by any person not specifically exempted under Paragraph (6) shall be prima face evidence of violation of this Article. Said vehicle is deemed to be “junk” and is declared to be a nuisance.
- (6) ***Junked vehicles on private property.***
- (a) It is unlawful for any person who is the owner of any vehicle or the owner of any property, or person who is in charge or in control of any property, whether as owner, tenant, occupant, lessee, or otherwise, to permit or allow any junked, discarded or partially wrecked vehicle, or parts thereof, to remain on the property longer than 10 days; provided that this Section shall not apply with regard to a vehicle or parts of a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in an area zoned for vehicle repair, or a vehicle in an appropriate storage place or depository maintained for impounded vehicles by the City.
 - (b) It is the duty of the police department and code enforcement officer to require the owner or agent of the owner of any premises whereon is situated any partially dismantled, junked, abandoned, discarded or partially wrecked vehicle, or parts thereof, to remove the same within ten days.
 - (c) For the purposes of this Section, the tenant, occupant or lessee shall be deemed agent of the owner of the premises.
 - (d) Upon the failure, neglect or refusal of any owner or agent of the owner so notified to properly dispose of the vehicle or parts thereof within the time limits set forth in subsection (b) above, the police department is authorized and empowered to remove the same at the expense of the owner or agent of the owner, plus a fee which is on file in the office of the City Clerk for the administrative expenses of the City.
 - (e) In case the owner or agent of the owner of such property fails to pay such bill within 30 days after the same has been rendered, the police department shall report the same to the City Manager who shall cause assessment of the costs against the property in question in accordance with Article III of this Chapter.

ARTICLE III. NUISANCE RESPONSIBILITY AND ABATEMENT

Sec. 10.47 Costs and charges; lien against property.

- (1) The person responsible for any nuisance within the City is liable for and shall pay and bear all costs and expenses of the abatement of such nuisance, which costs and expenses may be collected by the City in any action at law, or collected in connection with an action to abate a nuisance, or assessed against the property as provided in this Section.
- (2) Except for nuisances requiring summary abatement, a notice shall be sent to or served upon the person(s) deemed responsible for the nuisance and shall state that if the nuisance is not abated within the time stated in the notice, the cost of such abatement may be assessed as a lien against the property (such notice describing the same) pursuant to the terms of this article, together with an additional fee as set by City Resolution for inspection and incidental costs and an additional ten percent assessment for costs of collection, and collected in the same manner as real estate taxes against the property. The notice may be mailed, posted on the property and/or served by any officer directed or deputized to mail, post or serve the same. In causing notice to be served, the Mayor, Chief of Police or City Manager may authorize city officials, inspectors, or any other appropriate city employee to issue notice of abatement.
- (3) If after the expiration of the period of time provided for in the notice, or as extended, costs or expenses are incurred by or on behalf of the City in the abatement or in connection with the abatement of the nuisance, and the costs are not otherwise collected, the City Manager or his designee may thereafter certify to the City Clerk the legal description of the property upon which the work was done, together with the name of the owner thereof as shown by the tax rolls of the county, together with a statement of the work performed, the date of performance and the costs thereof.
- (4) Upon receipt of a statement from the City Manager, the City Clerk shall mail a notice to the owner of the premises as shown by the tax roll, at the address shown upon the tax rolls, by first class mail, postage prepaid, notifying the owner that work has been performed pursuant to this article, stating the date of performance and the nature of the work and demanding payment of the costs thereof, as certified by the City Manager, together with the inspection/incidental costs fee and costs of collection fee in connection therewith. The notice shall state that if the amount is not paid within 30 days of mailing the notice, it shall become an assessment on and a lien against the property of the owner (such notice describing the same) and will be certified as an assessment against the property together with the costs described in this Section, and the assessment will be collected in the same manner as a real estate tax upon the property.
- (5) If the clerk does not receive payment within the period of 30 days following the mailing of the notice, the clerk shall certify to the County Treasurer the whole cost of the work and costs described in this Section in connection therewith upon the lots and tracts of land upon which the nuisance was abated.
- (6) Each assessment shall be a lien against each lot or tract of land until paid and shall have priority over other liens, except general taxes and prior special assessments.

Sec. 10.48 Right of entry-procedure generally.

- (1) Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the City Manager, Land Use Administrator, Chief of Police or a police officer of the City, or Code Enforcement Officer, has reasonable cause to believe that there exists in any building, or upon any premises, any condition which constitutes a nuisance under this Article, the City Manager, Land Use Administrator, Chief of Police or any authorized police officer may enter the building at all reasonable times to inspect the same or to perform any duty imposed on any of them; provided that if the building is occupied, the person shall first present proper credentials and demand entry. If the building or premises is unoccupied, he shall first make a reasonable effort to locate the owner and/or occupant or other person having charge or control of the building, and, upon locating the owner, occupant or other person, shall present proper credentials and demand entry.
- (2) If entry is refused, the person shall give the owner and/or occupant, or, if the owner and/or occupant cannot be located after a reasonable effort, he shall leave at the building or premises twenty four hours written notice of intention to inspect. "The notice given to the owner and/or occupant or left on the premises, as designated in this Section, shall state that the property owner has the right to refuse entry and that, in the event entry is refused, inspection may be made only upon issuance of a search warrant by the municipal judge or judge of any other court having jurisdiction.
- (3) In the case of any nuisance involving a serious threat to public safety or order, after the expiration of the 24-hour period designated in this Section from the giving or leaving of the notice, the City Manager, City Attorney, Chief of Police, Land Use Administrator, or any of them, may appear before the judge of the municipal court and, upon showing of probable cause, obtain a search warrant entitling him to enter the building or upon the premises. Upon presentation of the search warrant and proper credentials, or possession of same (in the case of an unoccupied building or premises) the person may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry therein. Nothing contained in this Section is intended to negate the authority of the officials described in this Section to enter any portion of any property which is not posted or otherwise protected by the 4th Amendment of the United States Constitution or for which entry has not been refused in order to enforce the provisions of this Chapter.
- (4) It is unlawful for any owner and/or occupant of the building or premises to resist reasonable force used by the City Manager, Chief of Police or Code Enforcement Officer acting pursuant to this article.

Sec. 10.49 Responsibility of owner, occupant or agent.

- (1) Where a nuisance exists upon private property and is the outgrowth of the usual, natural or necessary use of the property, the owner thereof or his agents are declared the author thereof; but where any nuisance arises from the unusual use to which such property may be put, or from any business conducted thereon, the occupant shall also be deemed the author thereof. Any person who by himself or through an agent causes or creates the same shall be deemed the author of the nuisance.
- (2) In the event a nuisance must be abated by the City, no provision of this Section should be construed to relieve any property owner from any of the provisions contained in this Chapter.

- (3) The reasonable time for abatement shall not exceed 14 days, unless it appears from the facts and circumstances that compliance could not reasonably be made within 14 days or that a good faith attempt at compliance is being made.
- (4) Any officer or employee of the City who is authorized under this article to abate any nuisance specified in this article has authority to engage the necessary assistance and incur the necessary expenses thereof. In any case where a nuisance is to be abated by the City, it is the duty of the authorized person to employ such assistance and adopt such means as may be reasonably necessary to effect abatement of the nuisance. It is also the duty of the City or any of its representatives to proceed in all abatement cases with due care and without any unnecessary destruction of property.

(5) ***Alternative procedure: judicial determination***

- (a) When any person has responsibility for a nuisance, and the nuisance exists or is found and the responsible person fails to abate the same after the giving of the notice as provided for in herein, or as extended, then the city attorney may as an alternative procedure, institute proceedings in the Municipal Court or in a court of competent jurisdiction to obtain a judicial determination that the nuisance exists, to abate the nuisance, to enjoin the same, and for such other and further relief as may seem proper or necessary, including, but not limited to, collections of expenses of abatement.
- (b) Upon a judicial determination that a nuisance exists, the City Manager may be authorized to abate the nuisance or cause the same to be abated, employing such forces and persons as may be necessary to abate the same, including the employees of the City, or by contract or otherwise. The Chief of Police and all other city officials and employees are authorized and directed to render such assistance as may be required for the abatement of the nuisance and in connection with the enforcement thereof.

Sec. 10.50 Same-Emergencies - summary abatement.

- (1) Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this article, the City Manager, Fire Chief (or his designee) Chief of Police, authorized police officer, Code Enforcement Officer or Land Use Administrator, upon a presentation of proper credentials or identification (in the case of an occupied building or premises) may enter into any building or upon any premises within the jurisdiction of the City. In an emergency situation such person may use such reasonable force as may be necessary to gain entry into the building or upon the premises.
- (2) For the purposes of this Section, an emergency situation includes, but is not limited to, any situation where there is imminent danger of loss of life, limb and/or property or immediate danger to the public health or safety and which cannot await abatement by other means available under this Article.
- (3) It is unlawful for any owner and/or occupant of the building or premises to resist reasonable force used by any authorized official acting pursuant to this article.
- (4) Each and every nuisance mentioned, declared or defined by any ordinance of the City is prohibited and, depending upon the exigency of circumstances, may be subject to summary abatement. The

Mayor, City Manager or Chief of Police is authorized, in his discretion, to cause the same to be summarily abated in such manner as he may direct. Assessment of costs and charges of summary abatement shall be as provided in Sec. 10-47 of this Article.

- (5) Upon authorization by the Mayor, City Manager or Chief of Police, if any nuisance found to exist causes such imminent danger to life, limb, property or health as to require immediate abatement, any such nuisance may be summarily abated by action of a Police Officer, City Manager, the Land Use Administrator, or the Code Enforcement Officer as may be directed by the Chief of Police, Mayor, or City Manager.

Sec. 10.51 Cumulative remedies.

No remedy provided in this article shall be exclusive, but the same shall be cumulative. The taking of any action under this article, including charge or conviction of violation of this article in the municipal court, shall not preclude or prevent the taking of other action under the provisions of this article to abate or enjoin any nuisance found to exist.

Sec. 10.52 Concurrent remedies.

Whenever a nuisance exists, no remedy provided for in this article shall be exclusive of any other charge or action, and, when applicable, the abatement provisions of this article shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this article that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

Sec. 10.53 Penalty for violation.

Any person in the City who is responsible for creating or maintaining any nuisance as provided for in this Article shall, in addition to the civil penalties and costs provided herein be subject to the General Penalty provision in Section 1-16 of the Monte Vista Municipal Code. Every person violating or contributing in any way to the violation of any provision of this Chapter shall be deemed guilty of a separate offense for each day during which such violation continues and may be punished for each such violation as provided in this Section.

Sec. 10.54 Complaints.

Complaints of nuisances may be made to the City Manager, Chief of Police, Police Officer, City Clerk, Mayor, Land Use Administrator, or Code Enforcement Officer. Whenever possible, any complaint shall state the nature of the nuisance; the location, including street address; the name of the owner, agent or occupant of the building or lot, if known; and the name and address of the complainant.