

ORDINANCE NO. 2003-005
**AN ORDINANCE IDENTIFYING, MAKING ILLEGAL, AND
ABATING CERTAIN NUISANCES IN THE TOWN OF CRESTONE,
COLORADO**

WHEREAS, Colorado Municipalities are empowered to enact legislation to abate or control nuisances in accordance with the provisions of C.R.S. 31-15-401 (1)(c)(d); and

WHEREAS, the Board of Trustees of the Town of Crestone has examined various provisions of the Town Code concerning nuisances; and

WHEREAS, The Board has found existing provisions to be cumbersome and inadequate concerning the definition of public nuisances and methods of abating the same; and

WHEREAS, the Board believes a Nuisance Code should be specifically enacted to address types of nuisances and providing for their abatement,

NOW THEREFORE, it is hereby ordained by the Board of Trustees of Crestone, Colorado:

- a. That Chapter X (Sections 158 through 184, inclusive) compiled Ordinances of the Town of Crestone, Colorado, 1955, is hereby repealed in its entirety;
- b. That the following Nuisance Code is hereby enacted:

**SECTION I
DEFINITIONS**

- A. **Hazard to health or safety** includes any activity so recognized by the Ordinances of the Town. Such hazards shall also include activities likely to cause foul or offensive odors, promote the growth or propagation of disease-carrying insects, pollute the air or groundwaters of adjacent property, create loud or offensive sounds or cause drainage and runoff to occur in other than historical patterns.
- B. **Nuisance** means any substance, act, occupation, condition or use of property declared a nuisance by this Ordinance, or which is of such nature and duration as to:
 1. Substantially annoy, injure, or damage 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.

- C. ***Offensive or unwholesome business or establishment*** means any business or establishment involving the provision of goods or services to others in exchange for something of value, which business or establishment may create, foster or maintain any hazard to health or safety.

SECTION II PROHIBITION – RESPONSIBLE PARTY

No person being the owner, agent, or occupant or having under his or her control any building, lot or premises or unimproved real estate within the Town limits shall maintain or allow any nuisance to be or remain therein.

SECTION III AUTHORITY OF TOWN

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

SECTION IV NUISANCES DECLARED

- A. ***Unwholesome Business.*** From and after the effective date of this Ordinance it shall be unlawful for any person to allow or suffer upon his or her premises, or any premises, which he or she is entitled to possess, any offensive or unwholesome business, or establishment within the Town. Any slaughterhouse or other place for slaughtering animals within the Town is declared a nuisance.
- B. ***Discharge of noxious 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 Town is hereby declared a nuisance.
- C. ***Stale matter.*** The accumulation of any stale, putrid or stinking garbage or other matter is hereby declared to be a nuisance.
- D. ***Sewer inlet.*** Any article or materials accumulated in any sewer, sewer inlet or privy vault that shall have a sewer connection, which cause or might cause

such sewer, sewer inlet, or privy vault to become noxious, inoperable, offensive to others, or injurious to public health, is hereby declared to be a nuisance.

- E. ***Dead animals' removal.*** The body of any animal which has died and which is not disposed of after twenty-four (24) hours after death is hereby declared to be a nuisance.
- F. ***Stagnant ponds.*** Any cellar, vault, drain, sewer, pond of water, discarded tires or other place in the Town that shall be noxious or offensive to others, or injurious to public health, through an accumulation or deposit of noxious, offensive or foul water or other substances shall be deemed a nuisance. This applies in all cases for which no other specific provisions are made in this or any other Ordinance of the Town.
- G. ***Open wells, cisterns, or excavations.*** It is hereby declared that excavations exceeding five (5) feet in depth, cisterns and wells or any excavation used for storage of water are public nuisances unless the same are adequately covered with a locked lid or other covering weighing at least sixty (60) pounds or are securely fenced with a solid fence to a height of at least five (5) feet, and it shall be unlawful for any person to permit such nuisance to remain on premises owned or occupied by him or her. Any well or cistern on any property within the limits of the Town, whenever a chemical analysis or other proper test, or the location of the same, shows that the water of said well or cistern is probably contaminated, impure or unwholesome, shall be deemed a nuisance. Any abandoned or unused well or cistern shall be filled with dirt or concrete and covered.
- H. ***Abandoned vehicles.*** Any vehicle left or unmoved on Town property, road or right-of-way for a period of more than fourteen (14) days is declared a nuisance, and shall be issued a warning ticket and, thereafter, will be subject to being towed within 48 hours, with expenses to be paid by the owner.
- I. ***Animals running at large.*** Any animal not under control by it's owner which creates a serious annoyance or threat to the public is declared a nuisance.
- J. ***Barking, yelping, howling, mewling, or other sounds by dogs, cats, or other animals.*** Any animal which, by loud or frequent and habitual barking, yelping, howling, mewling or other sounds, causes a serious annoyance to the neighborhood or to persons passing to and fro upon the streets or sidewalks is hereby declared a nuisance.
- K. ***Smoke and odor from burning.*** Any smoke and odor resulting from the burning of refuse, trash, or other materials is hereby declared to be a nuisance and is prohibited.

- L. **Lights.** The failure to shade exterior lighting fixtures in order to avoid causing direct light on any adjacent property or on any public right-of-way (except to the extent permitted under any sign ordinance or conditional use permit) is declared to be a nuisance.
- M. **Noise.** Any loud or unusual noises or music created by human, animal, or mechanical means, which would disturb the peace and quiet of any neighborhood within the Town between the hours of 10:00 p.m. and 7:00 a.m., is declared a nuisance except where a variance is granted.

SECTION V - COMPLAINTS

Complaints of nuisances may be made in writing to the Town Clerk. Whenever possible, any complaint shall state the nature of such nuisance, the location, including street address, name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

SECTION VI RIGHT OF ENTRY – INSPECTIONS

- A. Whenever necessary to make an inspection to enforce any of the provisions of this Ordinance, or whenever an authorized representative of the Town shall have reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, the authorized Town official may enter such building or premises at all reasonable times to inspect the same and to abate any nuisance found therein. If such building or premises is occupied, such official shall first demand entry; and if such building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner or occupant or other person having charge or control of the building or premises and, upon locating said owner, occupant or other person or persons, shall demand entry. If entry is refused, such official shall give the owner or occupant, or, if said owner or occupant cannot be located after a reasonable effort, he or she shall leave at the building or premises a twenty-four (24) hours' written notice of intention to inspect. The notice given to the owner or occupant or left on the premises as aforesaid shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant issued by the Municipal Judge of the Town or a judge of any other court having jurisdiction.
- B. After the expiration of said twenty-four (24) hour period from the giving or leaving of notice, the authorized Town official may appear before the Municipal Judge of the Town and, upon showing of probable cause, shall obtain a search warrant entitling him or her to enter said building or go upon such premises. Upon presentation of said search warrant and proper credentials, or possession of the same in the case of an unoccupied building or

premises, said official may enter into said building or go upon said premises using such reasonable force as may be necessary to gain entry.

- C. For the purposes of the above section (B.), a determination of probable cause will be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The official applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant. It shall be unlawful for any owner or occupant of said building or premises to resist reasonable force used by any authorized agent acting pursuant to this Section.
- D. Whenever an emergency exists in relation to the enforcement of any of the provisions of this Ordinance, the authorized Town official may enter into any building or go upon any premises within the jurisdiction of the Town. In said emergency situation, such person or his or her authorized representative may use such reasonable force as may be necessary to gain entry into said building or upon said premises.
- E. For purposes of the above Section (D.), an emergency situation shall include but not be limited to any situation where there is imminent danger of loss of life, limb and/or property. It shall be unlawful for any owner or occupant of said building or premises to resist reasonable force used by the authorized official acting pursuant to this Section.

SECTION VII VIOLATION AND PENALTIES

Any person convicted in the Municipal Court of any violation of this Ordinance shall be subject to imprisonment in the County jail for a period not to exceed three (3) months, or fined an amount not to exceed three hundred dollars (\$300.00), or both such fine and imprisonment. Each day upon which any violation shall continue shall constitute a separate offense. In addition to, or as an alternate to, Municipal Court prosecution, the Town may, upon five (5) days' prior written notice to the owner, abate the nuisance or cause it to be abated.

SECTION VIII ABATEMENT, COSTS AND CHARGES, LIEN AGAINST PROPERTY

- A. The person responsible for any nuisance within the Town 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 Town 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.
- B. The notice required in this section shall, in addition, 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 section, together with an additional five percent assessment 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. If the owner of the property is not personally served with a copy of the notice, then a true copy of the notice shall be mailed by registered or certified mail, return receipt requested, to the owner of the property as shown upon the tax rolls of the county at the address of the owner as therein shown.

- C. 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 Town in the abatement or in connection with the abatement of the nuisance, and the costs are not otherwise collected, the Town Administrator or Town Marshall shall certify to the Town 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.
- D. Upon receipt of a statement from the Town Administrator or Town Marshall, the Town 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 Town Administrator, together with five percent assessment for inspection and other incidental costs 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 ten percent assessment for costs of collection, and the assessment mentioned in this section will be collected in the same manner as a real estate tax upon the property.
- E. If the clerk does not receive payment within the period of 30 days following the mailing of the notice, the clerk shall certify the whole costs of the work including a charge of five percent of the whole costs for inspection and other incidental costs in connection therewith upon the lots and tracts of land upon which the nuisance was abated, together with a charge of ten percent of the whole costs for costs of collection. The same shall be delivered to the county treasurer, who shall collect the assessment, including the ten percent charge for cost of collection, in the same manner as other taxes are collected.
- F. 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 assessment.

SECTION IX 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.

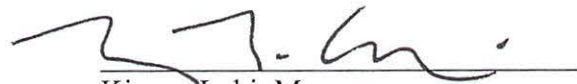
SECTION X CONCURRENT REMEDIES

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.

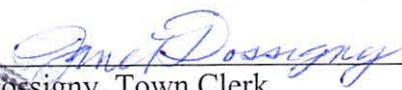
THE TOWN BOARD FINDS THAT THIS ORDINANCE IS NECESSARY TO THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, AND SAFETY, AND SHALL TAKE EFFECT AND BE ENFORCED FROM AND AFTER PASSAGE OF THE SAME.

INTRODUCED, read in full, adopted, approved, and signed this 8th day of December 2003.

APPROVED:


Kizzen Laki, Mayor

ATTEST:


Janet Dossigny, Town Clerk



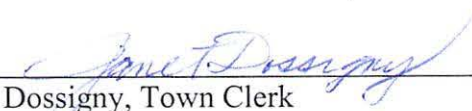
APPROVED AS TO FORM:



Eugene L. Farish, #2557
Crestone Town Attorney

CERTIFICATION

I hereby certify that the within Ordinance was introduced, read in full, approved and adopted at the regular meeting of the Board of Trustees of the Town of Crestone, *on Nov. 10, 2003,* and signed *and signed* Colorado, on the 8th day of December, 2003, and published by title only in the Crestone Eagle, a legal newspaper in the Town of Crestone, on the 1st day of January, 2003.



Janet Dossigny, Town Clerk