

ORDINANCE 2019-01

AN ORDINANCE CLARIFYING THE LEGAL STATUS PROVISIONS OF ORDINANCE NO. 2004-007 (AN ORDINANCE AMENDING ORDINANCE NO. 2003-005 (AN ORDINANCE IDENTIFYING, MAKING ILLEGAL, AND ABATING CERTAIN NUISANCES) IN THE TOWN OF CRESTONE, COLORADO), AS THE SAME CONCERNS TOWN LIGHTING, LIGHT SHADING AND ENACTING ADDITIONAL PROVISIONS OF THE NUISANCE CODE CONCERNING CAMPING AND OCCUPYING TOWN PROPERTY IN THE TOWN BY AMENDING ORDINANCE NO. 2017-001 (AN ORDINANCE AMENDING ORDINANCE NO. 2003-005 (AN ORDINANCE IDENTIFYING, MAKING ILLEGAL, AND ABATING CERTAIN NUISANCES IN THE TOWN OF CRESTONE, COLORADO))

WHEREAS, The Board of Trustees of the Town of Crestone has received various complaints concerning unshaded lighting in the Town, which creates a nuisance for Town residents, and

WHEREAS, The Board of Trustees of the Town of Crestone has examined the legislative history of the Town's attempts to create and maintain shaded or "dark sky" Ordinance provisions in lighting from private property lighting sources; and

WHEREAS, Ordinance #2004-007 Section IV L amended Ordinance #2003-005 Section IV L to provide specific standards for lighting from private lighting sources; and

WHEREAS, Ordinance #2017-001 repealed and reenacted most provisions of the Town's nuisance code and in doing so, substantially reenacted the Section IV L, of Ordinance #2005-003 addressing lighting – while not amending or repealing Section IV L (Lights: Concealed Light Source) of Ordinance #2004-007; and

WHEREAS, the Board of Trustees determined that the provisions of Section IV L of Ordinance #2004-007 concerning concealed lighting was intended and should be integrated into the Town's present nuisance code by replacing Section IV L of Ordinance #2005-003; and

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 Town of Crestone has received code complaints regarding people camping and occupying property in the Town for extensive periods of time; and

WHEREAS, the Board of Trustees has also determined that camping and occupying of Town property by camping trailers, travel trailers, motor homes, recreational vehicles, tents, and yurts is contrary to the provisions of the zoning code and has become problematic in the Town; and

WHEREAS, Section 102(q) (Specific Nuisances) of the Town Nuisance Code as enacted by Ordinance No. 2017-001 contains provisions prohibiting camping on public rights of way, but does not address occupancy upon private property.

NOW THEREFORE, be it ordained by the Board of Trustees of the Town of Crestone, Colorado, that the Crestone Town Nuisance Code Ordinance No. 2017-001 is hereby amended to read as follows:

**NUISANCES
ARTICLE I. PUBLIC NUISANCES**

Sec. 1.02 Specific Nuisances

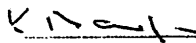
p) **Lights.** Concealed Light Source. Light sources shall be concealed or shielded to the maximum extent feasible to minimize the potential for glare and unnecessary diffusion on adjacent property and away from the vision of passing motorists. All lights shall be directed downward and the light source shall be equipped with "cutoff" devices so that it will not be visible from any adjacent property and to ensure that ambient skyward light is eliminated. Light fixtures installed in the canopies, awnings, and overhangs shall be fully recessed. Light fixtures shall be mounted on concrete, fiberglass, wood or painted metal poles no higher than sixteen feet from the ground. Lighting mounted on a building or structure shall not exceed the height of the building or structure. The failure to shade exterior lighting fixtures as above described in order to avoid causing direct light on any adjacent property or on any public right-of-way is declared to be a nuisance.

q) **Camping and occupancy on public property**
(1) Camping in vehicles, camping trailers, recreational vehicles, tents, yurts, and any other occupancy upon the public right of way or on any other public property of the Town between the hours of 10 p.m. and 8 a.m. on any day of the week is hereby declared a nuisance and is prohibited, except as may be specified by the Town by resolution designating certain areas, tracts, lots or portions thereof for such purposes.

THE TOWN BOARD OF TRUSTEES FINDS THAT THIS ORDINANCE IS NECESSARY TO THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, AND SAFETY DUE TO COMPLAINTS FROM PRIVATE CITIZENS ON GLARE AND LIGHT POLLUTION CURRENTLY EXPRESSED IN THE TOWN, AND SHALL TAKE EFFECT AND BE ENFORCED FROM AND AFTER PASSAGE OF THE SAME.

INTRODUCED, read in full, adopted, APPROVED, and SIGNED this 14th day of January, 2019.

APPROVED:


Kairina Danforth, Mayor

ATTEST:

Allyson Ransom
Allyson Ransom, Town Clerk

APPROVED AS TO FORM:

Eugene L. Farish
Eugene L. Farish
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, Colorado on the 1st day of February, 2019 and will be published by title in the Crestone Eagle, a legal newspaper in the Town of Crestone, on the 4 day of February, 2019. with and the Saguache Crescent

Allyson Ransom
Allyson Ransom, Town Clerk

NUISANCES

ARTICLE I. PUBLIC NUISANCES

Sec. 1.01 Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Brush means voluntary growth of bushes and such as are growing out of place at the location where growing, and includes all cuttings from trees and bushes and high and rank shrubbery growth which may conceal filthy deposits.

Common law nuisance means any nuisance which has been declared to be such by state courts or statutes or known as such at common law, and shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Code.

Garbage means any and all rejected or waste food, meat, vegetable, fruit, offal, swill and carrion, and other like materials from any source.

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 ground waters of adjacent property, create loud or offensive sounds, or cause drainage and runoff to occur in other than historical patterns.

Inoperable vehicle means any automobile, truck, tractor, motorcycle or self-propelled vehicle which is in a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned, or unable to perform the functions or purpose for which it was originally constructed. The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- (a) Absence of an effective registration plate upon such vehicle.
- (b) Placement of the vehicle or parts thereof upon jacks, blocks, chains, or other supports.
- (c) Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

Junk means any old, used, or secondhand materials of any kind, including, but not limited to, 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 secondhand building material; any discarded machinery, tractors, trucks or automobiles; or any other article or thing commonly known and classified as *junk*.

Litter means the scattering or dropping of rubbish, trash, or other matter, organic or mineral.

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 the business or establishment may create, foster or maintain and create any hazard to health or safety.

Public nuisance means a substance, act, occupation, condition, or use of property which is of such a nature and continues for such length of time as to:

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

Rubbish means inorganic refuse matter, such as tin cans, glass, paper, boxes, bottles, discarded building and construction materials, sweepings, and other like materials.

Trash means any grass clippings, leaves, hay, straw, manure, shavings, excelsior, ashes, toppings, twigs, worthless matter or material, and all manner of waste substances other than garbage and rubbish, usually accumulating upon, in, and around private premises.

Weed means an unsightly, useless, troublesome, or injurious growing herbaceous plant, and includes all rank vegetable growth which exhales unpleasant and noxious odors and high and rank vegetable growth that may conceal filthy deposits.

Sec. 1.02 Specific Nuisances

a) Stagnant water, contaminated or impure well or cistern, pits or holes, basement or cellars, discarded tires, holding water

- 1) Ditches, sloughs, and man-made water holding devices containing stagnant water which may provide a breeding ground for mosquitos and other insects are declared to be nuisances.
- 2) Excavations exceeding five (5) feet in depth, cisterns and wells, or an excavation used 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 Town, 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 declared to be a nuisance.
- 4) Any abandoned well or cistern must automatically be filled in. Every owner, tenant, occupant, lessee, or other person in possession of any premises or any part thereof, upon which there is located a well or cistern containing contaminated, impure, or unwholesome water, must mitigate or remedy the use of the same, or cause the same to be filled with earth or such other material as may be designated by the Town Clerk, Mayor, or Town Code/Law Enforcement Officer.

b) Scattering debris

Unauthorized dumping, throwing, or placing any rubbish, cans, boxes, debris, grass clippings, or other waste materials on any public place or on private property in the Town is a nuisance and is prohibited.

c) 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 Town in such quantities which could harbor or conceal harmful vermin, rodents, or insects, or which is unsafe, unhealthy, or unsightly to persons or the public.

d) Transporting garbage/trash in open vehicles

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

e) 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, including fumes from vehicles idling more than ten (10) minutes.

f) 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 public health.

g) Accumulation of excessive firewood, flammable materials

Accumulation of an excessive amount of firewood, kindling, or flammable materials at or upon a lot or residence in such a manner as to cause a fire hazard or unsightly annoyance to others, when declared a hazard by the fire chief or certified fire mitigator, is declared to be a nuisance.

h) Offensive or unwholesome businesses or establishments

It shall be unlawful for any person to allow or suffer upon his premises or to conduct upon any premises or property within the Town, or within one (1) mile beyond the outer limits of the Town, 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 to be 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.

i) Discharge or storage 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 Town is hereby declared to be a nuisance. The discharge or storage of any flammable or hazardous liquid or substance onto any lot, residence, building, or other property in the Town in such a manner as to constitute a hazard or danger to persons or property is also hereby declared to be a nuisance.

j) Stale matter

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

k) 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.

l) Dead animals; removal

The body of any animal which has died and which is undisposed of after twenty-four (24) 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 Town right of way or other Town property shall be considered to have violated this Section.

m) Loud and obnoxious noises

- 1) The operation of a device, speaker, or vehicle audio system in, upon, or from any vehicle, upon any street, alley, or sidewalk of the Town, or from any residence, business, or other property which has the effect of an unreasonable and offensive annoyance within residential zones, is hereby declared to be a public nuisance. At a distance of twenty-five (25) feet out from a property line, such noise shall not exceed fifty-five (55) decibels from 7:00 am-10:00 pm, and shall not exceed fifty (50) decibels from 10:00 pm-7:00 am. Within Commercial Zones, noise shall not exceed sixty-five (65) decibels from 7:00 am-10:00 pm, and shall not exceed sixty (60) decibels from 10:00 pm-7:00 am.
- 2) The use of engine brakes or any other similarly designated auxiliary engine braking system upon cars, trucks, and other motor vehicles which is unnecessary to the safe operation of said vehicles within the Town is hereby prohibited and is declared to be a nuisance.
- 3) It is unlawful for any owner or keeper of any dog to permit the dog, by loud and persistent or habitual barking, yelping, mewling, or other sounds, to disturb any person or neighborhood, and the same is declared to be a public nuisance.
- 4) The process of operating diesel vehicles at idle while the vehicle is not moving in the Town for periods of time longer than fifteen (15) minutes creates noise and smoke pollution in the Town and, whether said vehicle is occupied or unoccupied, the same is hereby declared to be a nuisance.

n) Animals running at large

Any animal not under control by its owner which creates a serious annoyance or threat to the public is declared to be a nuisance.

- 1) No dog owner, custodian, or caretaker shall fail to exercise proper care and control of his or her dog(s) so as to prevent such dog(s) from becoming a public nuisance.
- 2) It shall be unlawful for any such owner or person to allow any dog to injure or destroy any real or personal property of any description belonging to another.

- 3) It shall be unlawful for any such owner or person to allow any dog to chase, harass, or injure wildlife.
- 4) No person shall permit any dog of which he or she is the owner, caretaker, or custodian to run at large within the Town. Any such dog shall be deemed to be running at large when it is off the premises owned or rented by its owner, caretaker, or custodian and not under leash. Any such dog may be impounded by the Town.

o) 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.

p) Lights

Light sources shall be concealed or shielded to the maximum extent feasible to minimize the potential for glare and unnecessary diffusion on adjacent property and away from the vision of passing motorists. All lights shall be directed downward and the light source shall be equipped with "cutoff" devices so that it will not be visible from any adjacent property and to ensure that ambient skyward light is eliminated. Light fixtures installed in canopies, awnings, and overhangs shall be fully recessed. Light fixtures shall be mounted on concrete, fiberglass, wood, or painted metal poles no higher than sixteen (16) feet from the ground. Lighting mounted on a building or structure shall not exceed the height of the building or structure. The failure to shade exterior lighting fixtures as described above in order to avoid causing direct light to shine on any adjacent property or on any public right of way is declared to be a nuisance.

q) Camping and occupancy on property

Camping in vehicles, camping trailers, recreational vehicles, tents, yurts, and any other occupancy upon a public right of way or on any other public property of the Town between the hours of 10:00 pm-8:00 am on any day of the week is hereby declared to be a nuisance and is prohibited, except as may be specified by the Town by resolution designating certain areas, tracts, lots, or portions thereof for such purposes.

r) Feeding bears and other wildlife

It shall be unlawful for any person(s) within the Town of Crestone to intentionally feed bears or any person(s) to habitually leave unprotected garbage or food in an open area where access can be gained by bears. No person(s) shall fail to take remedial action to avoid contact or conflict with bears, which may include the securing or removal of outdoor trash, cooking grills, pet food, bird feeders, or any other similar food source or attractant.

No person(s) shall place, deposit, distribute, or scatter grain, hay, or other foods so as to intentionally constitute a lure, attraction, or enticement for big game not lawfully held in captivity.

All garbage cans and similar refuse receptacles that do not have a latching mechanism which keeps the lid tightly closed against the can or receptacle and which prevents access to the contents of the can or receptacle by wildlife shall be stored inside a building or shed.

Business owners, operators, or occupiers of property within the Town with roadside pickup shall place their garbage cans and similar refuse receptacles at the curb only on the day of pickup. After pickup, the garbage cans and similar refuse receptacles must be re-secured in a storage area by 10:00 pm.

s) Trash containers and littering

The Town of Crestone requires that all trash receptacles of any town business which sells, serves, or processes food items, be designed as hard-sided containers to prevent animals from gaining entrance to the contents. Business owner(s), operator(s), or occupier(s) are responsible to have their trash collected and properly disposed of on a regular basis. If litter from the business garbage should be released from its container either through animals gaining entry or negligence on the part of the owner or operator which results in spillage and spreading of such trash, the Town may collect such trash and the owner, operator, or person in possession of such property will be subject to a fine. Such owner, operator, or person in possession shall be responsible for informing their customers and invitees of these provisions.

All garbage cans and similar refuse receptacles that do not have a latching mechanism which keeps the lid tightly closed against the can or receptacle and which prevents access to the contents of the can or receptacle by wildlife shall be stored inside a building or shed.

Business owners, operators, or occupiers of property within the Town with roadside pickup shall place their garbage cans and similar refuse receptacles at the curb only on the day of pickup. After pickup, the garbage cans and similar refuse receptacles must be re-secured in a storage area by 10:00 pm.

t) Handbills, posters and placards

Any sign, handbill, poster, placard, or painted or printed matter which shall be stuck, posted, or pasted 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 upon any fence, power pole, telephone pole, tree, or other structure without the permission of the owner of such structure, shall be declared to be a nuisance. Any such permitted signs, handbills, posters, placards, or painted or printed matters shall be removed within three (3) days after expiration of the advertised event by any person placing or responsible for placing same.

u) *Snow and tree debris removal.*

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 Town to clean the snow or tree debris off the sidewalk abutting thereon within twenty-four (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.

v) *Junkyards and dumping grounds*

- 1) 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.
- 2) The keeping, storage, or collection of junk shall not be declared a nuisance when and if the same is kept, stored, or collected in completely enclosed buildings or completely obscured from public view. This Article shall not apply to any properly zoned premises where a licensed motor vehicle dealer or a farm implement dealer conducts his or her business.

w) *Abandoned, wrecked, and junked vehicles*

- 1) No person shall abandon any vehicle within the Town, whether on a Town right of way or on private property, and no person shall leave any vehicle at any place within the Town or on private property for such times and under such circumstances as to cause the vehicle reasonably to appear to be abandoned.
- 2) Whenever any police officer or town law/code enforcement officer finds a vehicle unattended standing upon any portion of a street or highway right of way within the Town, or left unattended for a period of twenty-four (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 Town. Vehicles removed from streets or highways and other property within the Town 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 Town or on private property, other than public rights of way, the owner of the property shall notify the Town law/code enforcement officer, and the department shall, after a period of seventy-two (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 Town.
- 4) No person shall leave any wrecked, discarded, junked, or partially dismantled vehicle on any street or highway within the Town or on private property.
- 5) 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 V(2) shall be *prima facie* evidence of violation of this Article. Said vehicle is declared to be "junk" and is declared to be a nuisance.
 - (a) It is the duty of the Town Clerk, Mayor, or Town Code/Law 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 (10) days.
 - (b) For the purposes of this Section, the tenant, occupant, or lessee shall be declared agent of the owner of the premises.
 - (c) Upon 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 law/code enforcement officer 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 Town Clerk for the administrative expenses of the Town.
 - (d) In case the owner or agent of the owner of such property fails to pay such bill within thirty (30) days after the same has been rendered, the law/code enforcement officer shall report the same to the Town Clerk, who shall cause assessment of the costs against the property in question in accordance with Article III.

x) *Weeds and wild growth*

- 1) Declared nuisance. Permitting the growth or decay of chico, sagebrush, greasewood, thistles, weeds, or other waste vegetation within the Town is a nuisance, creating fire hazards, and mosquito breeding grounds within the Town is a nuisance.

Comment [WU1]: This is extraneous given the language that follows.

Comment [WU2]: This sounds like it was part of another section. Should it be removed from here?

Comment [WU3]: (See penultimate comment).

- 2) Permitting to grow or remain declared a nuisance. Every person being the owner, occupant, tenant, or in control of any lot or parcel of land within the Town, or any person having a contractual relationship with the owner which allows him or her to list the property for sale, who permits or allows the growth, decay, or presence of chico, sagebrush, greasewood, thistles, weeds, or other waste vegetation in excess of eight (8) inches in height on any premises or sidewalk, is guilty of creating, continuing, and suffering a nuisance to exist. Property owners, lessees, and persons in possession of any property in the Town shall be responsible for maintaining their property (and any adjacent property of the Town 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.

- 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 Town 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 Town Clerk 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 Ordinance.

Comment [WU4]: (See first comment on this page).

y) *Petroleum products storage tanks*

- 1) No gasoline or fuel storage tank greater than sixty (60) gallons, whether above or below ground, will be allowed within five hundred (500) feet from any municipal or private water well in the Town, provided further that no such tank(s) shall be allowed less than one thousand (1,000) feet from such well(s) when located in the path of the direction of water flow or transmissivity to said well(s). Such areas surrounding wells are hereby designated as Wellhead Protection Areas.
- 2) Any above-ground storage of petroleum products greater than twenty (20) gallons and within a Wellhead Protection Area or five hundred (500) feet from any water body must have a catch basin at least equal to the size of the storage container, capable of capturing any leaked fuel. Such above-ground storage containers must be inspected

Comment [WU5]: Should this be included in the "Definitions" Section?

upon installation, prior to being permitted, with additional inspections to be performed at least every five (5) years.

- 3) Nothing contained in this Ordinance shall be deemed to apply to fuel tanks on trucks, fuel delivery trucks, and automobiles which are regularly used for delivering fuel or to propane tanks.
- 4) The following uses are specifically prohibited within the Wellhead Protection Area:
 - (a) Underground storage tanks of any size
 - (b) Septage and/or sludge spreading
 - (c) Animal confinement facilities
 - (d) Gas stations
 - (e) Vehicle repair establishments, including auto body repair
 - (f) Landfills or waste disposal facilities
 - (g) Wastewater treatment facilities
 - (h) Junk yards or auto salvage yards
 - (i) Bulk fertilizer and/or pesticide facilities
 - (j) Asphalt products
 - (k) Manufacturing dry cleaning businesses
 - (l) Salt storage
 - (m) Electroplating facilities
 - (n) Exterminating businesses
 - (o) Paint and coating manufacturing
 - (p) Hazardous and/or toxic materials storage
 - (q) Hazardous and/or toxic waste facilities
 - (r) Radioactive waste facilities
 - (s) Cemeteries
- 5) Any uses, structures, or storage tanks validly existing upon the date of this Ordinance are hereby deemed to be valid non-conforming uses in accordance with Regulation VIII (Non-Conforming Uses, Signs, Etc.) of the Zoning Regulations of the Town of Crestone as enacted in Ordinance # 2009-009, provided however that upgrade of such storage tanks to facilitate or enhance groundwater protection shall be allowed upon approval by the Planning Commission and an appropriate permit issued by the Town Clerk prior to any work being initiated.
- 6) Requirements for existing prohibited uses:
 - (a) The owners of uses shall provide copies of all federal, state, and local facility operation approvals or certificates and ongoing environmental or safety

structures/monitoring as deemed necessary by the Town, which may include but are not limited to storm water runoff management or monitoring.

- (b) Such users shall replace equipment or expand in a manner that improves the existing environmental and safety technologies already in existence.
- (c) Such users shall have the responsibility of devising and filing with the Town a contingency plan satisfactory to the Town Board for immediate notification of the public in the event of an emergency.

ARTICLE II. NUISANCE RESPONSIBILITY AND ABATEMENT

Sec. 1.03 Costs and charges; lien against property

- 1) 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.
- 2) Except for nuisances requiring summary abatement, a notice shall be sent to or served upon the person(s) declared 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 Town Resolution for inspection and incidental costs and an additional ten (10) 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 Town Clerk, Mayor, Town Code/Law Enforcement Officer may authorize Town officials, inspectors, or any other appropriate Town employee to use 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 Town in the abatement or in connection with the abatement of the nuisance, and the costs are not otherwise collected, the Town Clerk or their designee may thereafter 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.

- 4) Upon receipt of a statement from the Town Clerk, Mayor, or Town Code/Law Enforcement Officer, 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 Clerk, together with the inspection/incidental fee and costs of collection ~~fee~~ in connection therewith. The notice shall state that if the amount is not paid within thirty (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 Town Clerk does not receive payment within the period of thirty (30) days following the mailing of the notice, the Town 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. 1.04 *Right of entry-procedure generally*

- 1) Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Town Clerk, Mayor, or Town Code/Law 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 Town Clerk, Mayor, or Town Code/Law Enforcement 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 request entry. If the building or premises is unoccupied, the Town Clerk, Mayor, or Town Code/Law Enforcement Officer 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 request 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, the Town Clerk, Mayor, or Town Code/Law Enforcement Officer shall leave at the building or premises twenty-four (24) 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 having issuance of a search warrant by the municipal judge or judge of any court having jurisdiction.

- 3) In the case of any nuisance involving a serious threat to public safety or order, after the expiration of the twenty-four (24) hour period designated in this Section from the giving or leaving of the notice, the Town Clerk, Mayor, or Town Code/Law Enforcement Officer, 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 or her 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 Town Clerk, Mayor, or Town Code/Law Enforcement Officer 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 Ordinance.
- 4) It is unlawful for any owner and/or occupant of the building or premises to resist reasonable force used by the Town Clerk, Mayor, or Town Code/Law Enforcement Officer acting pursuant to this article.

Sec. 1.05 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 or her 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 declared the author thereof. Any person who by himself or herself or through an agent causes or creates the same shall be declared the author of the nuisance.
- 2) In the event a nuisance must be abated by the Town, no provision of this Section should be construed to relieve any property owner from any of the provisions contained in this Ordinance.
- 3) The reasonable time for abatement shall not exceed fourteen (14) days, unless it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) days or that a good faith attempt at compliance is being made.

- 4) Any officer or employee of the Town 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 Town, 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 Town 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 herein, or as extended, then the Town 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 Town Clerk, Mayor, or Town Code/Law Enforcement Officer 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 Town, or by contract or otherwise. The Chief of Police and all other Town 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. 1.06 Same-Emergencies—summary abatement

- 1) Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Article, the Town Clerk, Mayor, or Town Code/Law Enforcement Officer, 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 Town. 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 purpose 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 Town is prohibited and, depending upon the exigency of circumstances, may be subject to summary abatement. The Town Clerk, Mayor, or Town Code/Law Enforcement Officer is authorized, in his or her discretion, to cause the same to be summarily abated in such a manner as he may direct. Assessment of costs and charges of summary abatement shall be as provided in *Sec. 1.47* of this Article.
- 5) Upon authorization by the Town Clerk, Mayor, or Town Code/Law Enforcement Officer, 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 Town Clerk, Mayor, or Town Code/Law Enforcement Officer as may be directed by the Town Clerk, Mayor, or Town Code/Law Enforcement Officer.

Sec. 1.07 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. 1.08 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 municipal ordinances or any other provision of law.

Sec. 1.09 Penalty for violation

Any person in the Town 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 a fine in an amount not exceeding two thousand six hundred fifty dollars (\$2,650.00) and imprisonment not exceeding one (1) year or by both such fine and imprisonment. Every person violating or contributing in any way to the violation of any provision of this Ordinance shall be declared 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. 1.10 Complaints

Complaints of nuisances may be made to the Town Clerk, Mayor, or Town Code/Law Enforcement Officer. Whenever possible, any complaint made 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.